

COMPREHENSIVE ANTITERRORISM ACT OF 1995

DECEMBER 5, 1995.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1710]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 1710) to combat terrorism, having considered the same, re-
port favorably thereon with an amendment and recommend that
the bill as amended do pass.

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The amendment is as follows:
Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Comprehensive Antiterrorism Act of 1995”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—NEW OFFENSES

Sec. 101. Protection of Federal employees.
Sec. 102. Prohibiting material support to terrorist organizations.
Sec. 103. Modification of material support provision.
Sec. 104. Acts of terrorism transcending national boundaries.
Sec. 105. Conspiracy to harm people and property overseas.
Sec. 106. Clarification and extension of criminal jurisdiction over certain terrorism offenses overseas.
Sec. 107. Expansion and modification of weapons of mass destruction statute.
Sec. 108. Addition of offenses to the money laundering statute.
Sec. 109. Expansion of Federal jurisdiction over bomb threats.
Sec. 110. Clarification of maritime violence jurisdiction.
Sec. 111. Possession of stolen explosives prohibited.
Sec. 112. Study to determine standards for determining what ammunition is capable of penetrating police body armor.

TITLE II—INCREASED PENALTIES

Sec. 201. Mandatory minimum for certain explosives offenses.
Sec. 202. Increased penalty for explosive conspiracies.
Sec. 203. Increased and alternate conspiracy penalties for terrorism offenses.
Sec. 204. Mandatory penalty for transferring a firearm knowing that it will be used to commit a crime of violence.
Sec. 205. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence.
Sec. 206. Directions to Sentencing Commission.

TITLE III—INVESTIGATIVE TOOLS

Sec. 301. Interceptions of communications.
Sec. 302. Pen registers and trap and trace devices in foreign counterintelligence investigations.
Sec. 303. Disclosure of certain consumer reports to the Federal Bureau of Investigation for foreign counterintelligence investigations.
Sec. 304. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in foreign counterintelligence and counterterrorism cases.
Sec. 305. Study of tagging explosive materials, detection of explosives and explosive materials, rendering explosive components inert, and imposing controls of precursors of explosives.
Sec. 306. Application of statutory exclusionary rule concerning intercepted wire or oral communications.
Sec. 307. Exclusion of certain types of information from wiretap-related definitions.
Sec. 308. Addition of conspiracies to temporary emergency wiretap authority.
Sec. 309. Requirements for multipoint wiretaps.
Sec. 310. Access to telephone billing records.
Sec. 311. Requirement to preserve record evidence.
Sec. 312. Authority to request military assistance with respect to offenses involving biological and chemical weapons.
Sec. 313. Detention hearing.
Sec. 314. Reward authority of the Attorney General.
Sec. 315. Definition of terrorism.
Sec. 316. Protection of Federal Government buildings in the District of Columbia.
Sec. 317. Study of thefts from armories; report to the Congress.

TITLE IV—NUCLEAR MATERIALS

Sec. 401. Expansion of nuclear materials prohibitions.

TITLE V—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

Sec. 501. Definitions.
Sec. 502. Requirement of detection agents for plastic explosives.
Sec. 503. Criminal sanctions.
Sec. 504. Exceptions.
Sec. 505. Investigative authority.
Sec. 506. Effective date.

TITLE VI—IMMIGRATION-RELATED PROVISIONS

Subtitle A—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

Sec. 601. Removal procedures for alien terrorists.
Sec. 602. Funding for detention and removal of alien terrorists.

PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN TERRORISTS

Sec. 611. Membership in terrorist organization as ground for exclusion.
Sec. 612. Denial of asylum to alien terrorists.
Sec. 613. Denial of other relief for alien terrorists.

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Subtitle B—Expedited Exclusion

- Sec. 621. Inspection and exclusion by immigration officers.
- Sec. 622. Judicial review.
- Sec. 623. Exclusion of aliens who have not been inspected and admitted.

Subtitle C—Improved Information and Processing

PART 1—IMMIGRATION PROCEDURES

- Sec. 631. Access to certain confidential ins files through court order.
- Sec. 632. Waiver authority concerning notice of denial of application for visas.

PART 2—ASSET FORFEITURE FOR PASSPORT AND VISA OFFENSES

- Sec. 641. Criminal forfeiture for passport and visa related offenses.
- Sec. 642. Subpoenas for bank records.
- Sec. 643. Effective date.

Subtitle D—Employee Verification by Security Services Companies

- Sec. 651. Permitting security services companies to request additional documentation.

TITLE VII—AUTHORIZATION AND FUNDING

- Sec. 701. Authorization of appropriations.
- Sec. 702. Civil monetary penalty surcharge and telecommunications carrier compliance payments.
- Sec. 703. Firefighter and emergency services training.
- Sec. 704. Assistance to foreign countries to procure explosive detection devices and other counter-terrorism technology.
- Sec. 705. Research and development to support counterterrorism technologies.

TITLE VIII—MISCELLANEOUS

- Sec. 801. Machine readable visas and passports.
- Sec. 802. Study of State licensing requirements for the purchase and use of high explosives.
- Sec. 803. Compensation of victims of terrorism.
- Sec. 804. Jurisdiction for lawsuits against terrorist States.
- Sec. 805. Study of publicly available instructional material on the making of bombs, destructive devices, and weapons of mass destruction.
- Sec. 806. Compilation of statistics relating to intimidation of Government employees.

TITLE I—NEW OFFENSES

SEC. 101. PROTECTION OF FEDERAL EMPLOYEES.

(a) HOMICIDE.—Section 1114 of title 18, United States Code, is amended to read as follows:

“§ 1114. Protection of officers and employees of the United States

“Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished, in the case of murder, as provided under section 1111, or in the case of manslaughter, as provided under section 1112, or, in the case of attempted murder or manslaughter, as provided in section 1113.”.

(b) THREATS AGAINST FORMER OFFICERS AND EMPLOYEES.—Section 115(a)(2) of title 18, United States Code, is amended by inserting “, or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or” after “assaults, kidnaps, or murders, or attempts to kidnap or murder”.

SEC. 102. PROHIBITING MATERIAL SUPPORT TO TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—That chapter 113B of title 18, United States Code, that relates to terrorism is amended by adding at the end the following:

“§ 2339B. Providing material support to terrorist organizations

“(a) OFFENSE.—Whoever, within the United States, knowingly provides material support or resources in or affecting interstate or foreign commerce, to any organization which the person knows or should have known is a terrorist organization and that has been designated under section 212(a)(3)(B)(iv) of the Immigration and Nationality Act as a terrorist organization shall be fined under this title or imprisoned not more than 10 years, or both.

“(b) DEFINITION.—As used in this section, the term ‘material support or resources’ has the meaning given that term in section 2339A of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end the following new item:

“2339B. Providing material support to terrorist organizations.”.

SEC. 103. MODIFICATION OF MATERIAL SUPPORT PROVISION.

Section 2339A of title 18, United States Code, is amended read as follows:

“§ 2339A. Providing material support to terrorists

“(a) OFFENSE.—Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for or in carrying out, a violation of section 32, 37, 351, 844(f) or (i), 956, 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, 2332a, or 2332b of this title or section 46502 of title 49, or in preparation for or in carrying out the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than ten years, or both.

“(b) DEFINITION.—In this section, the term ‘material support or resources’ means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”.

SEC. 104. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

(a) OFFENSE.—Title 18, United States Code, is amended by inserting after section 2332a the following:

“§ 2332b. Acts of terrorism transcending national boundaries

“(a) PROHIBITED ACTS.—

“(1) Whoever, involving any conduct transcending national boundaries and in a circumstance described in subsection (b)—

“(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any individual within the United States; or

“(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States;

in violation of the laws of any State or the United States shall be punished as prescribed in subsection (c).

“(2) Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished as prescribed in subsection (c).

“(b) JURISDICTIONAL BASES.—The circumstances referred to in subsection (a) are—

“(1) any of the offenders travels in, or uses the mail or any facility of, interstate or foreign commerce in furtherance of the offense or to escape apprehension after the commission of the offense;

“(2) the offense obstructs, delays, or affects interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated;

“(3) the victim, or intended victim, is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;

“(4) the structure, conveyance, or other real or personal property is, in whole or in part, owned, possessed, used by, or leased to the United States, or any department or agency thereof;

“(5) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

“(6) the offense is committed in those places within the United States that are in the special maritime and territorial jurisdiction of the United States.

Jurisdiction shall exist over all principals and co-conspirators of an offense under this section, and accessories after the fact to any offense under this section, if at least one of such circumstances is applicable to at least one offender.

“(c) PENALTIES.—

“(1) Whoever violates this section shall be punished—

“(A) for a killing or if death results to any person from any other conduct prohibited by this section by death, or by imprisonment for any term of years or for life;

“(B) for kidnapping, by imprisonment for any term of years or for life;

“(C) for maiming, by imprisonment for not more than 35 years;

“(D) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years;

“(E) for destroying or damaging any structure, conveyance, or other real or personal property, by imprisonment for not more than 25 years;

“(F) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

“(G) for threatening to commit an offense under this section, by imprisonment for not more than 10 years.

“(2) Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.

“(d) LIMITATION ON PROSECUTION.—No indictment shall be sought nor any information filed for any offense described in this section until the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, makes a written certification that, in the judgment of the certifying official, such offense, or any activity preparatory to or meant to conceal its commission, is terrorism, as defined in section 2331 of this title.

“(e) PROOF REQUIREMENTS.—

“(1) The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

“(2) In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

“(f) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction—

“(1) over any offense under subsection (a), including any threat, attempt, or conspiracy to commit such offense; and

“(2) over conduct which, under section 3 of this title, renders any person an accessory after the fact to an offense under subsection (a).

“(g) DEFINITIONS.—As used in this section—

“(1) the term ‘conduct transcending national boundaries’ means conduct occurring outside the United States in addition to the conduct occurring in the United States;

“(2) the term ‘facility of interstate or foreign commerce’ has the meaning given that term in section 1958(b)(2) of this title;

“(3) the term ‘serious bodily injury’ has the meaning prescribed in section 1365(g)(3) of this title; and

“(4) the term ‘territorial sea of the United States’ means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the chapter 113B of title 18, United States Code, that relates to terrorism is amended by inserting after the item relating to section 2332a the following new item:

“2332b. Acts of terrorism transcending national boundaries.”.

(c) STATUTE OF LIMITATIONS AMENDMENT.—Section 3286 of title 18, United States Code, is amended by—

(1) striking “any offense” and inserting “any non-capital offense”;

(2) striking “36” and inserting “37”;

(3) striking “2331” and inserting “2332”;

(4) striking “2339” and inserting “2332a”; and

(5) inserting “2332b (acts of terrorism transcending national boundaries),” after “(use of weapons of mass destruction),”.

(d) PRESUMPTIVE DETENTION.—Section 3142(e) of title 18, United States Code, is amended by inserting “, 956(a), or 2332b” after “section 924(c)”.

SEC. 105. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.

(a) IN GENERAL.—Section 956 of chapter 45 of title 18, United States Code, is amended to read as follows:

“§ 956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country

“(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

“(2) The punishment for an offense under subsection (a)(1) of this section is—

“(A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and

“(B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

“(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.”.

(b) CLERICAL AMENDMENT.—The item relating to section 956 in the table of sections at the beginning of chapter 45 of title 18, United States Code, is amended to read as follows:

“956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country.”.

SEC. 106. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.

(a) AIRCRAFT PIRACY.—Section 46502(b) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking “and later found in the United States”;

(2) so that paragraph (2) reads as follows:

“(2) There is jurisdiction over the offense in paragraph (1) if—

“(A) a national of the United States was aboard the aircraft;

“(B) an offender is a national of the United States; or

“(C) an offender is afterwards found in the United States.”; and

(3) by inserting after paragraph (2) the following:

“(3) For purposes of this subsection, the term ‘national of the United States’ has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).”.

(b) DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.—Section 32(b) of title 18, United States Code, is amended—

(1) by striking “, if the offender is later found in the United States.”; and

(2) by inserting at the end the following the following: “There is jurisdiction over an offense under this subsection if a national of the United States was on board, or would have been on board, the aircraft; an offender is a national of the United States; or an offender is afterwards found in the United States. For purposes of this subsection, the term ‘national of the United States’ has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act.”.

(c) MURDER OF FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 1116 of title 18, United States Code, is amended—

(1) in subsection (b), by adding at the end the following:

“(7) ‘National of the United States’ has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).”; and

(2) in subsection (c), by striking the first sentence and inserting the following: “If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.”.

(d) PROTECTION OF FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 112 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting “‘national of the United States’,” before “and”; and

- (2) in subsection (e), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".
- (e) THREATS AND EXTORTION AGAINST FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 878 of title 18, United States Code, is amended—
- (1) in subsection (c), by inserting "national of the United States," before "and"; and
- (2) in subsection (d), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".
- (f) KIDNAPPING OF INTERNATIONALLY PROTECTED PERSONS.—Section 1201(e) of title 18, United States Code, is amended—
- (1) by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States."; and
- (2) by adding at the end the following: "For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".
- (g) VIOLENCE AT INTERNATIONAL AIRPORTS.—Section 37(b)(2) of title 18, United States Code, is amended—
- (1) by inserting "(A)" before "the offender is later found in the United States"; and
- (2) by inserting "; or (B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))" after "the offender is later found in the United States".
- (h) BIOLOGICAL WEAPONS.—Section 178 of title 18, United States Code, is amended—
- (1) by striking "and" at the end of paragraph (3);
- (2) by striking the "period" at the end of paragraph (4) and inserting "; and"; and
- (3) by adding the following at the end:
- "(5) the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

SEC. 107. EXPANSION AND MODIFICATION OF WEAPONS OF MASS DESTRUCTION STATUTE.

Section 2332a of title 18, United States Code, is amended—

- (1) in subsection (a)—
- (A) by inserting "AGAINST A NATIONAL OR WITHIN THE UNITED STATES" after "OFFENSE";
- (B) by inserting ", without lawful authority" after "A person who";
- (C) by inserting "threatens," before "attempts or conspires to use, a weapon of mass destruction"; and
- (D) by inserting "and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce" before the semicolon at the end of paragraph (2);
- (2) in subsection (b), so that subparagraph (B) of paragraph (2) reads as follows:
- "(B) any weapon that is designed to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;";
- (3) by redesignating subsection (b) as subsection (c); and
- (4) by inserting after subsection (a) the following new subsection:
- "(b) OFFENSE BY NATIONAL OUTSIDE THE UNITED STATES.—Any national of the United States who, without lawful authority and outside the United States, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.".

SEC. 108. ADDITION OF OFFENSES TO THE MONEY LAUNDERING STATUTE.

(a) **MURDER AND DESTRUCTION OF PROPERTY.**—Section 1956(c)(7)(B)(ii) of title 18, United States Code, is amended by striking “or extortion;” and inserting “extortion, murder, or destruction of property by means of explosive or fire;”.

(b) **SPECIFIC OFFENSES.**—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting after “an offense under” the following: “section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member),”;

(2) by inserting after “section 215 (relating to commissions or gifts for procuring loans),” the following: “section 351 (relating to Congressional or Cabinet officer assassination),”;

(3) by inserting after “section 793, 794, or 798 (relating to espionage),” the following: “section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce),”;

(4) by inserting after “section 875 (relating to interstate communications),” the following: “section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),”;

(5) by inserting after “1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution),” the following: “section 1111 (relating to murder), section 1114 (relating to protection of officers and employees of the United States), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),”;

(6) by inserting after “section 1203 (relating to hostage taking),” the following: “section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),”;

(7) by inserting after “section 1708 (theft from the mail),” the following: “section 1751 (relating to Presidential assassination),”;

(8) by inserting after “2114 (relating to bank and postal robbery and theft),” the following: “section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),”;

(9) by striking “of this title” and inserting the following: “section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code”.

SEC. 109. EXPANSION OF FEDERAL JURISDICTION OVER BOMB THREATS.

Section 844(e) of title 18, United States Code, is amended by striking “commerce,” and inserting “interstate or foreign commerce, or in or affecting interstate or foreign commerce,”.

SEC. 110. CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.

Section 2280(b)(1)(A) of title 18, United States Code, is amended—

(1) in clause (ii), by striking “and the activity is not prohibited as a crime by the State in which the activity takes place”; and

(2) in clause (iii), by striking “the activity takes place on a ship flying the flag of a foreign country or outside the United States,”.

SEC. 111. POSSESSION OF STOLEN EXPLOSIVES PROHIBITED.

Section 842(h) of title 18, United States Code, is amended to read as follows:

“(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan, any stolen explosive materials which are moving as, which are part of, which constitute, or which have been shipped or transported in, interstate or foreign commerce, either before or after such materials were stolen, knowing or having reasonable cause to believe that the explosive materials were stolen.”.

SEC. 112. STUDY TO DETERMINE STANDARDS FOR DETERMINING WHAT AMMUNITION IS CAPABLE OF PENETRATING POLICE BODY ARMOR.

The National Institute of Justice is directed to perform a study of, and to recommend to Congress, a methodology for determining what ammunition, designed for handguns, is capable of penetrating police body armor. Not later than 6 months after the date of the enactment of this Act, the National Institute of Justice shall report to Congress the results of such study and such recommendations.

TITLE II—INCREASED PENALTIES

SEC. 201. MANDATORY MINIMUM FOR CERTAIN EXPLOSIVES OFFENSES.

(a) INCREASED PENALTIES FOR DAMAGING CERTAIN PROPERTY.—Section 844(f) of title 18, United States Code, is amended to read as follows:

“(f) Whoever damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be fined under this title or imprisoned for not more than 25 years, or both, but—

“(1) if personal injury results to any person other than the offender, the term of imprisonment shall be not more than 40 years;

“(2) if fire or an explosive is used and its use creates a substantial risk of serious bodily injury to any person other than the offender, the term of imprisonment shall not be less than 20 years; and

“(3) if death results to any person other than the offender, the offender shall be subject to the death penalty or imprisonment for any term of years not less than 30, or for life.”.

(b) CONFORMING AMENDMENT.—Section 81 of title 18, United States Code, is amended by striking “fined under this title or imprisoned not more than five years, or both” and inserting “imprisoned not more than 25 years or fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both”.

(c) STATUTE OF LIMITATION FOR ARSON OFFENSES.—

(1) Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

“§ 3295. Arson offenses

“No person shall be prosecuted, tried, or punished for any non-capital offense under section 81 or subsection (f), (h), or (i) of section 844 of this title unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.”.

(2) The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by adding at the end the following new item:

“3295. Arson offenses.”.

(3) Section 844(i) of title 18, United States Code, is amended by striking the last sentence.

SEC. 202. INCREASED PENALTY FOR EXPLOSIVE CONSPIRACIES.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

“(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.”.

SEC. 203. INCREASED AND ALTERNATE CONSPIRACY PENALTIES FOR TERRORISM OFFENSES.

(a) TITLE 18 OFFENSES.—

(1) Sections 32(a)(7), 32(b)(4), 37(a), 115(a)(1)(A), 115(a)(2), 1203(a), 2280(a)(1)(H), and 2281(a)(1)(F) of title 18, United States Code, are each amended by inserting “or conspires” after “attempts”.

(2) Section 115(b)(2) of title 18, United States Code, is amended by striking “or attempted kidnapping” both places it appears and inserting “, attempted kidnapping, or conspiracy to kidnap”.

(3)(A) Section 115(b)(3) of title 18, United States Code, is amended by striking “or attempted murder” and inserting “, attempted murder, or conspiracy to murder”.

(B) Section 115(b)(3) of title 18, United States Code, is amended by striking “and 1113” and inserting “, 1113, and 1117”.

(4) Section 175(a) of title 18, United States Code, is amended by inserting “or conspires to do so,” after “any organization to do so,”.

(b) AIRCRAFT PIRACY.—

(1) Section 46502(a)(2) of title 49, United States Code, is amended by inserting “or conspiring” after “attempting”.

(2) Section 46502(b)(1) of title 49, United States Code, is amended by inserting “or conspiring to commit” after “committing”.

SEC. 204. MANDATORY PENALTY FOR TRANSFERRING A FIREARM KNOWING THAT IT WILL BE USED TO COMMIT A CRIME OF VIOLENCE.

Section 924(h) of title 18, United States Code, is amended—

- (1) by inserting “or having reasonable cause to believe” after “knowing”; and
- (2) by striking “imprisoned not more than 10 years, fined in accordance with this title, or both.” and inserting “subject to the same penalties as may be imposed under subsection (c) for a first conviction for the use or carrying of the firearm.”.

SEC. 205. MANDATORY PENALTY FOR TRANSFERRING AN EXPLOSIVE MATERIAL KNOWING THAT IT WILL BE USED TO COMMIT A CRIME OF VIOLENCE.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

“(o) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3) of this title) or drug trafficking crime (as defined in section 924(c)(2) of this title) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of the explosive materials.”.

SEC. 206. DIRECTIONS TO SENTENCING COMMISSION.

The United States Sentencing Commission shall forthwith, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that section had not expired, amend the sentencing guidelines so that the chapter 3 adjustment relating to international terrorism also applies to domestic terrorism.

TITLE III—INVESTIGATIVE TOOLS

SEC. 301. INTERCEPTIONS OF COMMUNICATIONS.

(a) AUTHORIZATION OF INTERCEPTIONS IN CERTAIN TERRORISM RELATED OFFENSES.—Section 2516(1) of title 18, United States Code, is amended—

- (1) by striking “and” at the end of subparagraph (n);
- (2) by redesignating subparagraph (o) as subparagraph (q); and
- (3) by inserting after paragraph (n) the following:
 - “(o) any violation of section 956 or section 960 (relating to certain actions against foreign nations), section 1114 (relating to protection of officers and employees of the United States), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 2332 (relating to terrorist acts abroad), section 2332a (relating to weapons of mass destruction), section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists), section 37 (relating to violence at international airports) of title 18, United States Code, or;
 - “(p) any felony violation of section 842 (relating to explosives) of this title; and”.

(b) REPORTS CONCERNING INTERCEPTED COMMUNICATIONS.—Subsection (6) of section 2518 of title 18, United States Code is amended to read as follows:

“(6) Whenever an order authorizing interception is entered under this chapter, the order shall require the attorney for the Government to file a report with the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such report shall be made 15 days after the interception has begun. No other reports shall be made to the judge under this subsection.”.

SEC. 302. PEN REGISTERS AND TRAP AND TRACE DEVICES IN FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS.

(a) APPLICATION.—Section 3122(b)(2) of title 18, United States Code, is amended by inserting “or foreign counterintelligence” after “criminal”.

(b) ORDER.—

- (1) Section 3123(a) of title 18, United States Code, is amended by inserting “or foreign counterintelligence” after “criminal”.
- (2) Section 3123(b)(1) of title 18, United States Code, is amended in subparagraph (B), by striking “criminal”.

SEC. 303. DISCLOSURE OF CERTAIN CONSUMER REPORTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS.

(a) **IN GENERAL.**—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after section 623 the following:

“SEC. 624. DISCLOSURES TO THE FEDERAL BUREAU OF INVESTIGATION FOR FOREIGN COUNTERINTELLIGENCE PURPOSES.

“(a) **IDENTITY OF FINANCIAL INSTITUTIONS.**—(1) Notwithstanding section 604 or any other provision of this title, a court or magistrate judge may issue an order ex parte, upon application by the Director of the Federal Bureau of Investigation (or the Director’s designee, whose rank shall be no lower than Assistant Special Agent in Charge), directing a consumer reporting agency to furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency. The court or magistrate judge shall issue the order if the court or magistrate judge finds, that—

“(A) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

“(B) there are specific and articulable facts giving reason to believe that the consumer—

“(i) is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978) or a person who is not a United States person (as defined in such section 101) and is an official of a foreign power; or

“(ii) is an agent of a foreign power and is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

“(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

“(b) **IDENTIFYING INFORMATION.**—(1) Notwithstanding section 604 or any other provision of this title, a court or magistrate judge shall issue an order ex parte, upon application by the Director of the Federal Bureau of Investigation (or the Director’s designee, whose rank shall be no lower than Assistant Special Agent in Charge), directing a consumer reporting agency to furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation. The court or magistrate judge shall issue the order if the court or magistrate judge finds, that—

“(A) such information is necessary to the conduct of an authorized foreign counterintelligence investigation; and

“(B) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978).

“(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

“(c) **COURT ORDER FOR DISCLOSURE OF CONSUMER REPORTS.**—(1) Notwithstanding section 604 or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation (or the Director’s designee, whose rank shall be no lower than Assistant Special Agent in Charge), a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, after the court or magistrate finds, in a proceeding in camera, that—

“(A) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

“(B) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—

“(i) is an agent of a foreign power; and

“(ii) is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

“(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

“(d) **CONFIDENTIALITY.**—(1) No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than officers, employees, or agents of a consumer reporting agency necessary to fulfill the

requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c).

“(2) No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

“(e) PAYMENT OF FEES.—The Federal Bureau of Investigation is authorized, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing reports or information in accordance with procedures established under this section, a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

“(f) LIMIT ON DISSEMINATION.—The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except—

“(1) to the Department of Justice or any other law enforcement agency, as may be necessary for the approval or conduct of a foreign counterintelligence investigation; or

“(2) where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

“(g) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, or in connection with a judicial or administrative proceeding to enforce the provisions of this Act. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

“(h) REPORTS TO CONGRESS.—On an annual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking and Financial Services of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

“(i) DAMAGES.—Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to any person harmed by the violation in an amount equal to the sum of—

“(1) \$100, without regard to the volume of consumer reports, records, or information involved;

“(2) any actual damages sustained by the person harmed as a result of the disclosure;

“(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

“(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

“(j) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

“(k) GOOD-FAITH EXCEPTION.—Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State notwithstanding.

“(l) INJUNCTIVE RELIEF.—In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs to-

gether with reasonable attorney fees, as determined by the court, may be recovered.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the Fair Credit Reporting Act (15 U.S.C. 1681a et seq.) is amended by adding after the item relating to section 623 the following new item:

“624. Disclosures to the Federal Bureau of Investigation for foreign counterintelligence purposes.”.

SEC. 304. ACCESS TO RECORDS OF COMMON CARRIERS, PUBLIC ACCOMMODATION FACILITIES, PHYSICAL STORAGE FACILITIES, AND VEHICLE RENTAL FACILITIES IN FOREIGN COUNTERINTELLIGENCE AND COUNTERTERRORISM CASES.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 121 the following:

“CHAPTER 122—ACCESS TO CERTAIN RECORDS

“Sec.

“2720. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in counterintelligence and counterterrorism cases.

“§ 2720. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in counterintelligence and counterterrorism cases

“(a)(1) A court or magistrate judge may issue an order ex parte, upon application by the Director of the Federal Bureau of Investigation (or the Director’s designee, whose rank shall be no lower than Assistant Special Agent in Charge), directing any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to furnish any records in its possession to the Federal Bureau of Investigation. The court or magistrate judge shall issue the order if the court or magistrate judge finds that—

“(A) such records are necessary for counterterrorism or foreign counterintelligence purposes; and

“(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is—

“(i) a foreign power; or

“(ii) an agent of a foreign power and is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

“(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

“(b) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or any officer, employee, or agent of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, shall disclose to any person, other than those officers, agents, or employees of the common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose the information to the Federal Bureau of Investigation under this section.

“(c)(1) The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside the Federal Bureau of Investigation, except—

“(A) to the Department of Justice or any other law enforcement agency, as may be necessary for the approval or conduct of a foreign counterintelligence investigation; or

“(B) where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

“(2) Any agency or department of the United States obtaining or disclosing any information in violation of this paragraph shall be liable to any person harmed by the violation in an amount equal to the sum of—

“(A) \$100 without regard to the volume of information involved;

“(B) any actual damages sustained by the person harmed as a result of the violation;

“(C) if the violation is willful or intentional, such punitive damages as a court may allow; and

“(D) in the case of any successful action to enforce liability under this paragraph, the costs of the action, together with reasonable attorney fees, as determined by the court.

“(d) If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

“(e) As used in this section—

“(1) the term ‘common carrier’ means a locomotive, rail carrier, bus carrying passengers, water common carrier, air common carrier, or private commercial interstate carrier for the delivery of packages and other objects;

“(2) the term ‘public accommodation facility’ means any inn, hotel, motel, or other establishment that provides lodging to transient guests;

“(3) the term ‘physical storage facility’ means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof; and

“(4) the term ‘vehicle rental facility’ means any person or entity that provides vehicles for rent, lease, loan, or other similar use, to the public or any segment thereof.”.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 121 the following new item:

“122. Access to certain records 2720”.

SEC. 305. STUDY OF TAGGING EXPLOSIVE MATERIALS, DETECTION OF EXPLOSIVES AND EXPLOSIVE MATERIALS, RENDERING EXPLOSIVE COMPONENTS INERT, AND IMPOSING CONTROLS OF PRECURSORS OF EXPLOSIVES.

(a) STUDY.—The Attorney General, in consultation with other Federal, State and local officials with expertise in this area and such other individuals as the Attorney General deems appropriate, shall conduct a study concerning—

(1) the tagging of explosive materials for purposes of detection and identification;

(2) technology for devices to improve the detection of explosives materials;

(3) whether common chemicals used to manufacture explosive materials can be rendered inert and whether it is feasible to require it; and

(4) whether controls can be imposed on certain precursor chemicals used to manufacture explosive materials and whether it is feasible to require it.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report that contains the results of the study required by this section. The Attorney General shall make the report available to the public.

SEC. 306. APPLICATION OF STATUTORY EXCLUSIONARY RULE CONCERNING INTERCEPTED WIRE OR ORAL COMMUNICATIONS.

Section 2515 of title 18, United States Code, is amended by adding at the end the following: “This section shall not apply to the disclosure by the United States in a criminal trial or hearing or before a grand jury of the contents of a wire or oral communication, or evidence derived therefrom, if any law enforcement officers who intercepted the communication or gathered the evidence derived therefrom acted with the reasonably objective belief that their actions were in compliance with this chapter.”.

SEC. 307. EXCLUSION OF CERTAIN TYPES OF INFORMATION FROM WIRETAP-RELATED DEFINITIONS.

(a) DEFINITION OF “ELECTRONIC COMMUNICATION”.—Section 2510(12) of title 18, United States Code, is amended—

(1) by striking “or” at the end of subparagraph (B);

(2) by inserting “or” at the end of subparagraph (C); and

(3) by adding a new subparagraph (D), as follows:

“(D) information stored in a communications system used for the electronic storage and transfer of funds;”

(b) DEFINITION OF “READILY ACCESSIBLE TO THE GENERAL PUBLIC”.—Section 2510(16) of title 18, United States Code, is amended—

(1) by inserting “or” at the end of subparagraph (D);

(2) by striking “or” at the end of subparagraph (E); and

(3) by striking subparagraph (F).

SEC. 308. ADDITION OF CONSPIRACIES TO TEMPORARY EMERGENCY WIRETAP AUTHORITY.

(a) SECTION 2518.—Section 2518(7)(a) of title 18, United States Code, is amended—

- (1) by striking “or” at the end of subparagraph (ii);
 - (2) by inserting after subparagraph (ii) the following:
 - “(iii) conspiratorial activities involving domestic terrorism or international terrorism (as that term is defined in section 2331 of this title), or”; and
 - (3) by redesignating existing subparagraph (iii) as subparagraph (iv).
- (b) DEFINITION OF DOMESTIC TERRORISM.—Section 2510 of title 18, United States Code, is amended.—
- (1) by striking “and” at the end of paragraph (17);
 - (2) by striking the period at the end of paragraph (18) and inserting “; and”; and
 - (3) by inserting after paragraph (18) the following:
 - “(19) ‘domestic terrorism’ means terrorism, as defined in section 2331 of this title, that occurs primarily inside the territorial jurisdiction of the United States.”.

SEC. 309. REQUIREMENTS FOR MULTIPOINT WIRETAPS.

Section 2518(11) of title 18, United States Code, is amended to read as follows: “(11) The requirements of subsections (1)(b)(11) and (3)(d) of this section relating to the specification of facilities from which or the place where the communication is to be intercepted to do not apply if, in the case of an application with respect to the interception of oral, wire, or electronic communications—

- “(a) the application is by a Federal investigative or law enforcement officer, and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General (or an official acting in any such capacity);
- “(b) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and
- “(c) the judge finds that such specification is not practical.”.

SEC. 310. ACCESS TO TELEPHONE BILLING RECORDS.

(a) SECTION 2709.—Section 2709(b) of title 18, United States Code, is amended—

- (1) in paragraph (1)(A), by inserting “local and long distance” before “toll billing records”;
- (2) by striking “and” at the end of paragraph (1);
- (3) by striking the period at the end of paragraph (2) and inserting “; and”; and

(4) by adding at the end a new paragraph (3), as follows: “(3) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director or the Director’s designee (in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized domestic terrorism investigation.”.

(b) SECTION 2703.—Section 2703(c)(1)(C) of title 18, United States Code, is amended by inserting “local and long distance” before “telephone toll billing records”.

(c) CIVIL REMEDY.—Section 2707 of title 18, United States Code, is amended—

- (1) in subsection (a), by striking “customer” and inserting “any other person”;
- (2) in subsection (c), inserting before the period at the end the following: “, and if the violation is willful or intentional, such punitive damages as the court may allow, and, in the case of any successful action to enforce liability under this section, the costs of the action, together with reasonable attorney fees, as determined by the court”; and

(3) by adding at the end the following:

“(f) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a court determines that any agency or department of the United States has violated this chapter and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.”.

SEC. 311. REQUIREMENT TO PRESERVE RECORD EVIDENCE.

Section 2703 of title 18, United States Code, is amended by adding at the end the following:

“(f) REQUIREMENT TO PRESERVE EVIDENCE.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records, and other evidence

in its possession pending the issuance of a court order or other process. Such records shall be retained for a period of 90 days, which period shall be extended for an additional 90-day period upon a renewed request by the governmental entity.”.

SEC. 312. AUTHORITY TO REQUEST MILITARY ASSISTANCE WITH RESPECT TO OFFENSES INVOLVING BIOLOGICAL AND CHEMICAL WEAPONS.

(a) **IN GENERAL.**—The Attorney General may request that the Secretary of Defense provide technical and logistical assistance by civilian and military personnel of the Department of Defense in support of Department of Justice activities relating to the enforcement of criminal law in an emergency situation involving biological weapons or chemical weapons of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

(1) the Secretary of Defense and the Attorney General determine that an emergency situation involving such weapons exists; and

(2) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) **DEFINITION.**—As used in this section, the term “emergency situation involving biological weapons or chemical weapons of mass destruction” means a circumstance involving a biological or chemical weapon of mass destruction—

(1) that poses a serious threat to the interests of the United States; and

(2) in which—

(A) civilian expertise is not readily available to provide the required assistance to counter the threat involved;

(B) Department of Defense special capabilities and expertise are needed to counter the threat; and

(C) enforcement of the law would be seriously impaired if the Department of Defense assistance were not provided.

(c) **NATURE OF ASSISTANCE.**—The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of title 10, United States Code) to monitor, contain, disable, or dispose of a biological or chemical weapon or elements of the weapon.

(d) **REGULATIONS.**—The Attorney General and the Secretary of Defense shall jointly issue regulations concerning the types of technical and logistical assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section. Such regulations shall not authorize arrest or any assistance in conducting searches and seizures that seek evidence related to violations of criminal law, except for the immediate protection of human life.

(e) **REIMBURSEMENT.**—The Secretary of Defense shall require reimbursement as a condition for providing assistance under this subsection in accordance with section 377 of title 10, United States Code.

(f) **DELEGATION.**—

(1) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this subsection. The Attorney General may delegate the Attorney General’s authority under this subsection only to the Associate Attorney General or an Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(2) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this subsection. The Secretary of Defense may delegate the Secretary’s authority under this subsection only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

SEC. 313. DETENTION HEARING.

Section 3142(f) of title 18, United States Code, is amended by inserting “(not including any intermediate Saturday, Sunday, or legal holiday)” after “five days” and after “three days”.

SEC. 314. REWARD AUTHORITY OF THE ATTORNEY GENERAL.

(a) **IN GENERAL.**—Title 18, United States Code, is amended by striking sections 3059 through 3059A and inserting the following:

“§ 3059. Reward authority of the Attorney General

“(a) The Attorney General may pay rewards and receive from any department or agency, funds for the payment of rewards under this section, to any individual who provides any information unknown to the Government leading to the arrest or prosecution of any individual for Federal felony offenses.

“(b) If the reward exceeds \$100,000, the Attorney General shall give notice of that fact to the Senate and the House of Representatives not later than 30 days after authorizing the payment of the reward.

“(c) A determination made by the Attorney General as to whether to authorize an award under this section and as to the amount of any reward authorized shall be final and conclusive, and no court shall have jurisdiction to review it.

“(d) If the Attorney General determines that the identity of the recipient of a reward or of the members of the recipient’s immediate family must be protected, the Attorney General may take such measures in connection with the payment of the reward as the Attorney General deems necessary to effect such protection.

“(e) No officer or employee of any governmental entity may receive a reward under this section for conduct in performance of his or her official duties.

“(f) Any individual (and the immediate family of such individual) who furnishes information which would justify a reward under this section or a reward by the Secretary of State under section 36 of the State Department Basic Authorities Act of 1956 may, in the discretion of the Attorney General, participate in the Attorney General’s witness security program under chapter 224 of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 203 of title 18, United States Code, is amended by striking the items relating to section 3059 and 3059A and inserting the following new item:

“3059. Reward authority of the Attorney General.”.

(c) CONFORMING AMENDMENT.—Section 1751 of title 18, United States Code, is amended by striking subsection (g).

SEC. 315. DEFINITION OF TERRORISM.

Section 2331 of title 18, United States Code, is amended—

(1) so that paragraph (1) reads as follows:

“(1) the term ‘terrorism’ means terrorist activity as defined in section 212(a)(3)(B)(ii) of the Immigration and Nationality Act;”;

(2) by inserting after paragraph (1) the following:

“(2) the term ‘international terrorism’ means terrorism that occurs primarily outside the territorial jurisdiction of the United States, or transcends national boundaries in terms of the means by which it is accomplished, the persons it appears intended to intimidate or coerce, or the locale in which its perpetrators operate or seek asylum;”;

(3) by redesignating existing paragraphs (2) through (4) as paragraphs (3) through (5), respectively.

SEC. 316. PROTECTION OF FEDERAL GOVERNMENT BUILDINGS IN THE DISTRICT OF COLUMBIA.

The Attorney General is authorized—

(1) to prohibit vehicles from parking or standing on any street or roadway adjacent to any building in the District of Columbia which is in whole or in part owned, possessed, used by, or leased to the Federal Government and used by Federal law enforcement authorities; and

(2) to prohibit any person or entity from conducting business on any property immediately adjacent to any such building.

SEC. 317. STUDY OF THEFTS FROM ARMORIES; REPORT TO THE CONGRESS.

(a) STUDY.—The Attorney General of the United States shall conduct a study of the extent of thefts from military arsenals (including National Guard armories) of firearms, explosives, and other materials that are potentially useful to terrorists.

(b) REPORT TO THE CONGRESS.—Within 6 months after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on the study required by subsection (a).

TITLE IV—NUCLEAR MATERIALS**SEC. 401. EXPANSION OF NUCLEAR MATERIALS PROHIBITIONS.**

Section 831 of title 18, United States Code, is amended—

(1) in subsection (a), by striking “nuclear material” each place it appears and inserting “nuclear material or nuclear byproduct material”;

- (2) in subsection (a)(1)(A), by inserting “or the environment” after “property”;
- (3) so that subsection (a)(1)(B) reads as follows:
 - “(B)(i) circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property or the environment; or (ii) such circumstances are represented to the defendant to exist;”;
- (4) in subsection (a)(6), by inserting “or the environment” after “property”;
- (5) so that subsection (c)(2) reads as follows:
 - “(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;”;
- (6) in subsection (c)(3), by striking “at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and”;
- (7) by striking “or” at the end of subsection (c)(3);
- (8) in subsection (c)(4), by striking “nuclear material for peaceful purposes” and inserting “nuclear material or nuclear byproduct material”;
- (9) by striking the period at the end of subsection (c)(4) and inserting “; or”;
- (10) by adding at the end of subsection (c) the following:
 - “(5) the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.”;
- (11) in subsection (f)(1)(A), by striking “with an isotopic concentration not in excess of 80 percent plutonium 238”;
- (12) in subsection (f)(1)(C) by inserting “enriched uranium, defined as” before “uranium”;
- (13) in subsection (f), by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;
- (14) by inserting after subsection (f)(1) the following:
 - “(2) the term ‘nuclear byproduct material’ means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;”;
- (15) by striking “and” at the end of subsection (f)(4), as redesignated;
- (16) by striking the period at the end of subsection (f)(5), as redesignated, and inserting a semicolon; and
- (17) by adding at the end of subsection (f) the following:
 - “(6) the term ‘national of the United States’ has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and
 - “(7) the term ‘United States corporation or other legal entity’ means any corporation or other entity organized under the laws of the United States or any State, district, commonwealth, territory or possession of the United States.”.

TITLE V—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

SEC. 501. DEFINITIONS.

Section 841 of title 18, United States Code, is amended by adding at the end the following:

“(o) ‘Convention on the Marking of Plastic Explosives’ means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

“(p) ‘Detection agent’ means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

“(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

“(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

“(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

“(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

“(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

“(q) ‘Plastic explosive’ means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.”.

SEC. 502. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.

Section 842 of title 18, United States Code, is amended by adding at the end the following:

“(l) It shall be unlawful for any person to manufacture any plastic explosive which does not contain a detection agent.

“(m)(1) it shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive which does not contain a detection agent.

“(2) Until the 15-year period that begins with the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States has expired, paragraph (1) shall not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive which was imported, brought into, or manufactured in the United States before the effective date of this subsection by or on behalf of any agency of the United States performing military or police functions (including any military Reserve component) or by or on behalf of the National Guard of any State.

“(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent.

“(2)(A) During the 3-year period that begins on the effective date of this subsection, paragraph (1) shall not apply to the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States before such effective date by any person.

“(B) Until the 15-year period that begins on the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States has expired, paragraph (1) shall not apply to the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States before the effective date of this subsection by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State.

“(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the effective date of this subsection, to fail to report to the Secretary within 120 days after the effective date of this subsection the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.”.

SEC. 503. CRIMINAL SANCTIONS.

Section 844(a) of title 18, United States Code, is amended to read as follows:

“(a) Any person who violates subsections (a) through (i) or (l) through (o) of section 842 of this title shall be fined under this title, imprisoned not more than 10 years, or both.”.

SEC. 504. EXCEPTIONS.

Section 845 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “(l), (m), (n), or (o) of section 842 and subsections” after “subsections”;

(2) in subsection (a)(1), by inserting “and which pertains to safety” before the semicolon; and

(3) by adding at the end the following:

“(c) It is an affirmative defense against any proceeding involving subsection (l), (m), (n), or (o) of section 842 of this title if the proponent proves by a preponderance of the evidence that the plastic explosive—

“(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

“(A) research, development, or testing of new or modified explosive materials;

“(B) training in explosives detection or development or testing of explosives detection equipment; or

“(C) forensic science purposes; or

“(2) was plastic explosive which, within 3 years after the effective date of this paragraph, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this subsection, the term ‘military device’ includes shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.”.

SEC. 505. INVESTIGATIVE AUTHORITY.

Section 846 of title 18, United States Code, is amended—

(1) by inserting “subsection (m) or (n) of section 842 or” before “subsection (d)”; and

(2) by adding at the end the following: “The Attorney General shall exercise authority over violations of subsection (m) or (n) of section 842 and subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title only when they are committed by a member of a terrorist or revolutionary group. In any matter involving a terrorist or revolutionary group or individual, as determined by the Attorney General, the Attorney General shall have primary investigative responsibility and the Secretary shall assist the Attorney General as requested.”.

SEC. 506. EFFECTIVE DATE.

The amendments made by this title shall take effect 1 year after the date of the enactment of this Act.

TITLE VI—IMMIGRATION-RELATED PROVISIONS

Subtitle A—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

SEC. 601. REMOVAL PROCEDURES FOR ALIEN TERRORISTS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended—

(1) by adding at the end of the table of contents the following:

“TITLE V—SPECIAL REMOVAL PROCEDURES FOR ALIEN TERRORISTS

“Sec. 501. Definitions.

“Sec. 502. Establishment of special removal court; panel of attorneys to assist with classified information.

“Sec. 503. Application for initiation of special removal proceeding.

“Sec. 504. Consideration of application.

“Sec. 505. Special removal hearings.

“Sec. 506. Consideration of classified information.

“Sec. 507. Appeals.

“Sec. 508. Detention and custody.”;

and

(2) by adding at the end the following new title:

“TITLE V—SPECIAL REMOVAL PROCEDURES FOR ALIEN TERRORISTS

“DEFINITIONS

“SEC. 501. In this title:

“(1) The term ‘alien terrorist’ means an alien described in section 241(a)(4)(B).

“(2) The term ‘classified information’ has the meaning given such term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.).

“(3) The term ‘national security’ has the meaning given such term in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App.).

“(4) The term ‘special attorney’ means an attorney who is on the panel established under section 502(e).

“(5) The term ‘special removal court’ means the court established under section 502(a).

“(6) The term ‘special removal hearing’ means a hearing under section 505.

“(7) The term ‘special removal proceeding’ means a proceeding under this title.

“ESTABLISHMENT OF SPECIAL REMOVAL COURT; PANEL OF ATTORNEYS TO ASSIST WITH CLASSIFIED INFORMATION

“SEC. 502. (a) IN GENERAL.—The Chief Justice of the United States shall publicly designate 5 district court judges from 5 of the United States judicial circuits who shall constitute a court which shall have jurisdiction to conduct all special removal proceedings.

“(b) TERMS.—Each judge designated under subsection (a) shall serve for a term of 5 years and shall be eligible for redesignation, except that the four associate judges first so designated shall be designated for terms of one, two, three, and four years so that the term of one judge shall expire each year.

“(c) CHIEF JUDGE.—The Chief Justice shall publicly designate one of the judges of the special removal court to be the chief judge of the court. The chief judge shall promulgate rules to facilitate the functioning of the court and shall be responsible for assigning the consideration of cases to the various judges.

“(d) EXPEDITIOUS AND CONFIDENTIAL NATURE OF PROCEEDINGS.—The provisions of section 103(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(c)) shall apply to proceedings under this title in the same manner as they apply to proceedings under such Act.

“(e) ESTABLISHMENT OF PANEL OF SPECIAL ATTORNEYS.—The special removal court shall provide for the designation of a panel of attorneys each of whom—

“(1) has a security clearance which affords the attorney access to classified information, and

“(2) has agreed to represent permanent resident aliens with respect to classified information under sections 506 and 507(c)(2)(B) in accordance with (and subject to the penalties under) this title.

“APPLICATION FOR INITIATION OF SPECIAL REMOVAL PROCEEDING

“SEC. 503. (a) IN GENERAL.—Whenever the Attorney General has classified information that an alien is an alien terrorist, the Attorney General, in the Attorney General’s discretion, may seek removal of the alien under this title through the filing with the special removal court of a written application described in subsection (b) that seeks an order authorizing a special removal proceeding under this title. The application shall be submitted in camera and ex parte and shall be filed under seal with the court.

“(b) CONTENTS OF APPLICATION.—Each application for a special removal proceeding shall include all of the following:

“(1) The identity of the Department of Justice attorney making the application.

“(2) The approval of the Attorney General or the Deputy Attorney General for the filing of the application based upon a finding by that individual that the application satisfies the criteria and requirements of this title.

“(3) The identity of the alien for whom authorization for the special removal proceeding is sought.

“(4) A statement of the facts and circumstances relied on by the Department of Justice to establish that—

“(A) the alien is an alien terrorist and is physically present in the United States, and

“(B) with respect to such alien, adherence to the provisions of title II regarding the deportation of aliens would pose a risk to the national security of the United States.

“(5) An oath or affirmation respecting each of the facts and statements described in the previous paragraphs.

“(c) RIGHT TO DISMISS.—The Department of Justice retains the right to dismiss a removal action under this title at any stage of the proceeding.

“CONSIDERATION OF APPLICATION

“SEC. 504. (a) IN GENERAL.—In the case of an application under section 503 to the special removal court, a single judge of the court shall be assigned to consider the application. The judge, in accordance with the rules of the court, shall consider the application and may consider other information, including classified information, presented under oath or affirmation. The judge shall consider the application (and

any hearing thereof) in camera and ex parte. A verbatim record shall be maintained of any such hearing.

“(b) APPROVAL OF ORDER.—The judge shall enter ex parte the order requested in the application if the judge finds, on the basis of such application and such other information (if any), that there is probable cause to believe that—

“(1) the alien who is the subject of the application has been correctly identified and is an alien terrorist, and

“(2) adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States.

“(c) DENIAL OF ORDER.—If the judge denies the order requested in the application, the judge shall prepare a written statement of the judge’s reasons for the denial.

“(d) EXCLUSIVE PROVISIONS.—Whenever an order is issued under this section with respect to an alien—

“(1) the alien’s rights regarding removal and expulsion shall be governed solely by the provisions of this title, and

“(2) except as they are specifically referenced, no other provisions of this Act shall be applicable.

“SPECIAL REMOVAL HEARINGS

“SEC. 505. (a) IN GENERAL.—In any case in which the application for the order is approved under section 504, a special removal hearing shall be conducted under this section for the purpose of determining whether the alien to whom the order pertains should be removed from the United States on the grounds that the alien is an alien terrorist. Consistent with section 506, the alien shall be given reasonable notice of the nature of the charges against the alien and a general account of the basis for the charges. The alien shall be given notice, reasonable under all the circumstances, of the time and place at which the hearing will be held. The hearing shall be held as expeditiously as possible.

“(b) USE OF SAME JUDGE.—The special removal hearing shall be held before the same judge who granted the order pursuant to section 504 unless that judge is deemed unavailable due to illness or disability by the chief judge of the special removal court, or has died, in which case the chief judge shall assign another judge to conduct the special removal hearing. A decision by the chief judge pursuant to the preceding sentence shall not be subject to review by either the alien or the Department of Justice.

“(c) RIGHTS IN HEARING.—

“(1) PUBLIC HEARING.—The special removal hearing shall be open to the public.

“(2) RIGHT OF COUNSEL.—The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent the alien. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18, United States Code. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged.

“(3) INTRODUCTION OF EVIDENCE.—The alien shall have a right to introduce evidence on the alien’s own behalf.

“(4) EXAMINATION OF WITNESSES.—Except as provided in section 506, the alien shall have a reasonable opportunity to examine the evidence against the alien and to cross-examine any witness.

“(5) RECORD.—A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept.

“(6) DECISION BASED ON EVIDENCE AT HEARING.—The decision of the judge in the hearing shall be based only on the evidence introduced at the hearing, including evidence introduced under subsection (e).

“(7) NO RIGHT TO ANCILLARY RELIEF.—In the hearing, the judge is not authorized to consider or provide for relief from removal based on any of the following:

“(A) Asylum under section 208.

“(B) Withholding of deportation under section 243(h).

“(C) Suspension of deportation under section 244(a) or 244(e).

“(D) Adjustment of status under section 245.

“(E) Registry under section 249.

“(d) SUBPOENAS.—

“(1) REQUEST.—At any time prior to the conclusion of the special removal hearing, either the alien or the Department of Justice may request the judge

to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal evidence or the source of evidence which has been introduced, or which the Department of Justice has received permission to introduce, in camera and ex parte pursuant to subsection (e) and section 506, and the Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena.

“(2) PAYMENT FOR ATTENDANCE.—If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid from funds appropriated for the enforcement of title II.

“(3) NATIONWIDE SERVICE.—A subpoena under this subsection may be served anywhere in the United States.

“(4) WITNESS FEES.—A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States.

“(5) NO ACCESS TO CLASSIFIED INFORMATION.—Nothing in this subsection is intended to allow an alien to have access to classified information.

“(e) INTRODUCTION OF CLASSIFIED INFORMATION.—

“(1) IN GENERAL.—Classified information that has been summarized pursuant to section 506(b) and classified information for which findings described in section 506(b)(4)(B) have been made and for which no summary is provided shall be introduced (either in writing or through testimony) in camera and ex parte and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary (if any) provided pursuant to such section. Notwithstanding the previous sentence, the Department of Justice may, in its discretion and after coordination with the originating agency, elect to introduce such evidence in open session.

“(2) TREATMENT OF ELECTRONIC SURVEILLANCE INFORMATION.—

“(A) USE OF ELECTRONIC SURVEILLANCE.—The Government is authorized to use in a special removal proceeding the fruits of electronic surveillance and unconsented physical searches authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) without regard to subsections (c), (e), (f), (g), and (h) of section 106 of that Act.

“(B) NO DISCOVERY OF ELECTRONIC SURVEILLANCE INFORMATION.—An alien subject to removal under this title shall have no right of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act of 1978 or otherwise for national security purposes. Nor shall such alien have the right to seek suppression of evidence.

“(C) CERTAIN PROCEDURES NOT APPLICABLE.—The provisions and requirements of section 3504 of title 18, United States Code, shall not apply to procedures under this title.

“(3) RIGHTS OF UNITED STATES.—Nothing in this section shall prevent the United States from seeking protective orders and from asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privileges.

“(f) INCLUSION OF CERTAIN EVIDENCE.—The Federal Rules of Evidence shall not apply to hearings under this section. Evidence introduced at the special removal hearing, either in open session or in camera and ex parte, may, in the discretion of the Department of Justice, include all or part of the information presented under section 504 used to obtain the order for the hearing under this section.

“(g) ARGUMENTS.—Following the receipt of evidence, the attorneys for the Department of Justice and for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The attorney for the Department of Justice shall open the argument. The attorney for the alien shall be permitted to reply. The attorney for the Department of Justice shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

“(h) BURDEN OF PROOF.—In the hearing the Department of Justice has the burden of showing by clear and convincing evidence that the alien is subject to removal be-

cause the alien is an alien terrorist. If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed and detained pending removal from the United States. If the alien was released pending the special removal hearing, the judge shall order the Attorney General to take the alien into custody.

“(i) WRITTEN ORDER.—At the time of rendering a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (e) shall not be made available to the alien or the public.

“CONSIDERATION OF CLASSIFIED INFORMATION

“SEC. 506. (a) CONSIDERATION IN CAMERA AND EX PARTE.—In any case in which the application for the order authorizing the special procedures of this title is approved, the judge who granted the order shall consider each item of classified information the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing and shall order the introduction of such information pursuant to section 505(e) if the judge determines the information to be relevant.

“(b) PREPARATION AND PROVISION OF WRITTEN SUMMARY.—

“(1) PREPARATION.—The Department of Justice shall prepare a written summary of such classified information which does not pose a risk to national security.

“(2) CONDITIONS FOR APPROVAL BY JUDGE AND PROVISION TO ALIEN.—The judge shall approve the summary so long as the judge finds that the summary is sufficient—

“(A) to inform the alien of the general nature of the evidence that the alien is an alien terrorist, and

“(B) to permit the alien to prepare a defense against deportation.

The Department of Justice shall cause to be delivered to the alien a copy of the summary.

“(3) OPPORTUNITY FOR CORRECTION AND RESUBMITTAL.—If the judge does not approve the summary, the judge shall provide the Department a reasonable opportunity to correct the deficiencies identified by the court and to submit a revised summary.

“(4) CONDITIONS FOR TERMINATION OF PROCEEDINGS IF SUMMARY NOT APPROVED.—

“(A) IN GENERAL.—If, subsequent to the opportunity described in paragraph (3), the judge does not approve the summary, the judge shall terminate the special removal hearing unless the judge makes the findings described in subparagraph (B).

“(B) FINDINGS.—The findings described in this subparagraph are, with respect to an alien, that—

“(i) the continued presence of the alien in the United States, and

“(ii) the provision of the required summary, would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person.

“(5) CONTINUATION OF HEARING WITHOUT SUMMARY.—If a judge makes the findings described in paragraph (4)(B)—

“(A) if the alien involved is an alien lawfully admitted for permanent residence, the procedures described in subsection (c) shall apply; and

“(B) in all cases the special removal hearing shall continue, the Department of Justice shall cause to be delivered to the alien a statement that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to section 505(e).

“(c) SPECIAL PROCEDURES FOR ACCESS AND CHALLENGES TO CLASSIFIED INFORMATION BY SPECIAL ATTORNEYS IN CASE OF LAWFUL PERMANENT ALIENS.—

“(1) IN GENERAL.—The procedures described in this subsection are that the judge (under rules of the special removal court) shall designate a special attorney (as defined in section 501(4)) to assist the alien—

“(A) by reviewing in camera the classified information on behalf of the alien, and

“(B) by challenging through an in camera proceeding the veracity of the evidence contained in the classified information.

“(2) RESTRICTIONS ON DISCLOSURE.—A special attorney receiving classified information under paragraph (1)—

“(A) shall not disclose the information to the alien or to any other attorney representing the alien, and

“(B) who discloses such information in violation of subparagraph (A) shall be subject to a fine under title 18, United States Code, imprisoned for not less than 10 years nor more than 25 years, or both.

“APPEALS

“SEC. 507. (a) APPEALS OF DENIALS OF APPLICATIONS FOR ORDERS.—The Department of Justice may seek a review of the denial of an order sought in an application by the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days after the date of such denial. In such a case the entire record of the proceeding shall be transmitted to the Court of Appeals under seal and the Court of Appeals shall hear the matter *ex parte*. In such a case the Court of Appeals shall review questions of law *de novo*, but a prior finding on any question of fact shall not be set aside unless such finding was clearly erroneous.

“(b) APPEALS OF DETERMINATIONS ABOUT SUMMARIES OF CLASSIFIED INFORMATION.—Either party may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

“(1) any determination by the judge pursuant to section 506(a)—

“(A) concerning whether an item of evidence may be introduced in camera and *ex parte*, or

“(B) concerning the contents of any summary of evidence to be introduced in camera and *ex parte* prepared pursuant to section 506(b); or

“(2) the refusal of the court to make the findings permitted by section 506(b)(4)(B).

In any interlocutory appeal taken pursuant to this subsection, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the Court of Appeals under seal and the matter shall be heard *ex parte*.

“(c) APPEALS OF DECISION IN HEARING.—

“(1) IN GENERAL.—Subject to paragraph (2), the decision of the judge after a special removal hearing may be appealed by either the alien or the Department of Justice to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal.

“(2) AUTOMATIC APPEALS IN CASES OF PERMANENT RESIDENT ALIENS IN WHICH NO SUMMARY PROVIDED.—

“(A) IN GENERAL.—Unless the alien waives the right to a review under this paragraph, in any case involving an alien lawfully admitted for permanent residence who is denied a written summary of classified information under section 506(b)(4) and with respect to which the procedures described in section 506(c) apply, any order issued by the judge shall be reviewed by the Court of Appeals for the District of Columbia Circuit.

“(B) USE OF SPECIAL ATTORNEY.—With respect to any issue relating to classified information that arises in such review, the alien shall be represented only by the special attorney designated under section 506(c)(1) on behalf of the alien.

“(d) GENERAL PROVISIONS RELATING TO APPEALS.—

“(1) NOTICE.—A notice of appeal pursuant to subsection (b) or (c) (other than under subsection (c)(2)) must be filed within 20 days after the date of the order with respect to which the appeal is sought, during which time the order shall not be executed.

“(2) TRANSMITTAL OF RECORD.—In an appeal or review to the Court of Appeals pursuant to subsection (b) or (c)—

“(A) the entire record shall be transmitted to the Court of Appeals, and

“(B) information received pursuant to section 505(e), and any portion of the judge's order that would reveal the substance or source of such information, shall be transmitted under seal.

“(3) EXPEDITED APPELLATE PROCEEDING.—In an appeal or review to the Court of Appeals pursuant to subsection (b) or (c):

“(A) REVIEW.—The appeal or review shall be heard as expeditiously as practicable and the Court may dispense with full briefing and hear the matter solely on the record of the judge of the special removal court and on such briefs or motions as the Court may require to be filed by the parties.

“(B) DISPOSITION.—The Court shall uphold or reverse the judge's order within 60 days after the date of the issuance of the judge's final order.

“(4) STANDARD FOR REVIEW.—In an appeal or review to the Court of Appeals pursuant to subsection (b) or (c):

“(A) QUESTIONS OF LAW.—The Court of Appeals shall review all questions of law *de novo*.

“(B) QUESTIONS OF FACT.—(i) Subject to clause (ii), a prior finding on any question of fact shall not be set aside unless such finding was clearly erroneous.

“(ii) In the case of a review under subsection (c)(2) in which an alien lawfully admitted for permanent residence was denied a written summary of classified information under section 506(b)(4), the Court of Appeals shall review questions of fact de novo.

“(e) CERTIORARI.—Following a decision by the Court of Appeals pursuant to subsection (b) or (c), either the alien or the Department of Justice may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari except as provided by the Court of Appeals or a Justice of the Supreme Court.

“(f) APPEALS OF DETENTION ORDERS.—

“(1) IN GENERAL.— The provisions of sections 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom section 508(b)(1) applies. In applying the previous sentence—

“(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit, and

“(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

“(2) NO REVIEW OF CONTINUED DETENTION.—The determinations and actions of the Attorney General pursuant to section 508(c)(2)(C) shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates the alien’s rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the United States Court of Appeals for the District of Columbia Circuit.

“DETENTION AND CUSTODY

“SEC. 508. (a) INITIAL CUSTODY.—

“(1) UPON FILING APPLICATION.—Subject to paragraphs (2) and (3), the Attorney General may take into custody any alien with respect to whom an application under section 503 has been filed and, notwithstanding any other provision of law, may retain such an alien in custody in accordance with the procedures authorized by this title.

“(2) SPECIAL RULES FOR PERMANENT RESIDENT ALIENS.—An alien lawfully admitted for permanent residence shall be entitled to a release hearing before the judge assigned to hear the special removal hearing. Such an alien shall be detained pending the special removal hearing, unless the alien demonstrates to the court that—

“(A) the alien, if released upon such terms and conditions as the court may prescribe (including the posting of any monetary amount), is not likely to flee, and

“(B) the alien’s release will not endanger national security or the safety of any person or the community.

The judge may consider classified information submitted in camera and ex parte in making a determination under this paragraph.

“(3) RELEASE IF ORDER DENIED AND NO REVIEW SOUGHT.—

“(A) IN GENERAL.—Subject to subparagraph (B), if a judge of the special removal court denies the order sought in an application with respect to an alien and the Department of Justice does not seek review of such denial, the alien shall be released from custody.

“(B) APPLICATION OF REGULAR PROCEDURES.—Subparagraph (A) shall not prevent the arrest and detention of the alien pursuant to title II.

“(b) CONDITIONAL RELEASE IF ORDER DENIED AND REVIEW SOUGHT.—

“(1) IN GENERAL.—If a judge of the special removal court denies the order sought in an application with respect to an alien and the Department of Justice seeks review of such denial, the judge shall release the alien from custody subject to the least restrictive condition or combination of conditions of release described in section 3142(b) and clauses (i) through (xiv) of section 3142(c)(1)(B) of title 18, United States Code, that will reasonably assure the appearance of

the alien at any future proceeding pursuant to this title and will not endanger the safety of any other person or the community.

“(2) NO RELEASE FOR CERTAIN ALIENS.—If the judge finds no such condition or combination of conditions, the alien shall remain in custody until the completion of any appeal authorized by this title.

“(c) CUSTODY AND RELEASE AFTER HEARING.—

“(1) RELEASE.—

“(A) IN GENERAL.—Subject to subparagraph (B), if the judge decides pursuant to section 505(i) that an alien should not be removed, the alien shall be released from custody.

“(B) CUSTODY PENDING APPEAL.—If the Attorney General takes an appeal from such decision, the alien shall remain in custody, subject to the provisions of section 3142 of title 18, United States Code.

“(2) CUSTODY AND REMOVAL.—

“(A) CUSTODY.—If the judge decides pursuant to section 505(i) that an alien shall be removed, the alien shall be detained pending the outcome of any appeal. After the conclusion of any judicial review thereof which affirms the removal order, the Attorney General shall retain the alien in custody and remove the alien to a country specified under subparagraph (B).

“(B) REMOVAL.—

“(i) IN GENERAL.—The removal of an alien shall be to any country which the alien shall designate if such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

“(ii) ALTERNATE COUNTRIES.—If the alien refuses to designate a country to which the alien wishes to be removed or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so designated would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be removed to any country willing to receive such alien.

“(C) CONTINUED DETENTION.—If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every 6 months shall provide to the attorney representing the alien at the special removal hearing a written report on the Attorney General's efforts. Any alien in custody pursuant to this subparagraph shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate.

“(D) FINGERPRINTING.—Before an alien is transported out of the United States pursuant to this subsection, or pursuant to an order of exclusion because such alien is excludable under section 212(a)(3)(B), the alien shall be photographed and fingerprinted, and shall be advised of the provisions of section 276(b).

“(d) CONTINUED DETENTION PENDING TRIAL.—

“(1) DELAY IN REMOVAL.—Notwithstanding the provisions of subsection (c)(2), the Attorney General may hold in abeyance the removal of an alien who has been ordered removed pursuant to this title to allow the trial of such alien on any Federal or State criminal charge and the service of any sentence of confinement resulting from such a trial.

“(2) MAINTENANCE OF CUSTODY.—Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

“(3) SUBSEQUENT REMOVAL.—Following the completion of a sentence of confinement by an alien described in paragraph (1) or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to carry out the provisions of subsection (c)(2) concerning removal of the alien.

“(e) APPLICATION OF CERTAIN PROVISIONS RELATING TO ESCAPE OF PRISONERS.—For purposes of section 751 and 752 of title 18, United States Code, an alien in the custody of the Attorney General pursuant to this title shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of a felony.

“(f) RIGHTS OF ALIENS IN CUSTODY.—

“(1) FAMILY AND ATTORNEY VISITS.—An alien in the custody of the Attorney General pursuant to this title shall be given reasonable opportunity to communicate with and receive visits from members of the alien’s family, and to contact, retain, and communicate with an attorney.

“(2) DIPLOMATIC CONTACT.—An alien in the custody of the Attorney General pursuant to this title shall have the right to contact an appropriate diplomatic or consular official of the alien’s country of citizenship or nationality or of any country providing representation services therefore. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien’s detention.”

(b) JURISDICTION OVER EXCLUSION ORDERS FOR ALIEN TERRORISTS.—Section 106(b) of the Immigration and Nationality Act (8 U.S.C. 1105a(b)) is amended by adding at the end the following sentence: “Jurisdiction to review an order entered pursuant to the provisions of section 235(c) concerning an alien excludable under section 212(a)(3)(B) shall rest exclusively in the United States Court of Appeals for the District of Columbia Circuit.”

(c) CRIMINAL PENALTY FOR REENTRY OF ALIEN TERRORISTS.—Section 276(b) of such Act (8 U.S.C. 1326(b)) is amended—

(1) by striking “or” at the end of paragraph (1),

(2) by striking the period at the end of paragraph (2) and inserting “; or”, and

(3) by inserting after paragraph (2) the following new paragraph:

“(3) who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or who has been removed from the United States pursuant to the provisions of title V, and who thereafter, without the permission of the Attorney General, enters the United States or attempts to do so shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.”

(d) ELIMINATION OF CUSTODY REVIEW BY HABEAS CORPUS.—Section 106(a) of such Act (8 U.S.C. 1105a(a)) is amended—

(1) by adding “and” at the end of paragraph (8),

(2) by striking “; and” at the end of paragraph (9) and inserting a period, and

(3) by striking paragraph (10).

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.

SEC. 602. FUNDING FOR DETENTION AND REMOVAL OF ALIEN TERRORISTS.

In addition to amounts otherwise appropriated, there are authorized to be appropriated for each fiscal year (beginning with fiscal year 1996) \$5,000,000 to the Immigration and Naturalization Service for the purpose of detaining and removing alien terrorists.

PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN TERRORISTS

SEC. 611. MEMBERSHIP IN TERRORIST ORGANIZATION AS GROUND FOR EXCLUSION.

(a) IN GENERAL.—Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)—

(A) by striking “or” at the end of subclause (I),

(B) in subclause (II), by inserting “engaged in or” after “believe,” and

(C) by inserting after subclause (II) the following:

“(III) is a representative of a terrorist organization, or

“(IV) is a member of a terrorist organization which the alien knows or should have known is a terrorist organization,”; and

(2) by adding at the end the following:

“(iv) TERRORIST ORGANIZATION DEFINED.—

“(I) DESIGNATION.—For purposes of this Act, the term ‘terrorist organization’ means a foreign organization designated in the Federal Register as a terrorist organization by the Secretary of State,

in consultation with the Attorney General, based upon a finding that the organization engages in, or has engaged in, terrorist activity that threatens the national security of the United States.

“(II) PROCESS.—At least 3 days before designating an organization as a terrorist organization through publication in the Federal Register, the Secretary of State, in consultation with the Attorney General, shall notify the Committees on the Judiciary of the House of Representatives and the Senate of the intent to make such designation and the findings and basis for designation. The Secretary of State, in consultation with the Attorney General, shall create an administrative record and may use classified information in making such a designation. Such information is not subject to disclosure so long as it remains classified, except that it may be disclosed to a court *ex parte* and *in camera* under subclause (III) for purposes of judicial review of such a designation. The Secretary of State, in consultation with the Attorney General, shall provide notice and an opportunity for public comment prior to the creation of the administrative record under this subclause.

“(III) JUDICIAL REVIEW.—Any organization designated as a terrorist organization under the preceding provisions of this clause may, not later than 30 days after the date of the designation, seek judicial review thereof in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based solely upon the administrative record, except that the Government may submit, for *ex parte* and *in camera* review, classified information considered in making the designation. The court shall hold unlawful and set aside the designation if the court finds the designation to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under the previous sentence, contrary to constitutional right, power, privilege, or immunity, or not in accord with the procedures required by law.

“(IV) CONGRESSIONAL AUTHORITY TO REMOVE DESIGNATION.—The Congress reserves the authority to remove, by law, the designation of an organization as a terrorist organization for purposes of this Act.

“(V) SUNSET.—Subject to subclause (IV), the designation under this clause of an organization as a terrorist organization shall be effective for a period of 2 years from the date of the initial publication of the terrorist organization designation by the Secretary of State. At the end of such period (but no sooner than 60 days prior to the termination of the 2-year-designation period), the Secretary of State, in consultation with the Attorney General, may redesignate the organization in conformity with the requirements of this clause for designation of the organization.

“(VI) OTHER AUTHORITY TO REMOVE DESIGNATION.—The Secretary of State, in consultation with the Attorney General, may remove the terrorist organization designation from any organization previously designated as such an organization, at any time, so long as the Secretary publishes notice of the removal in the Federal Register. The Secretary is not required to report to Congress prior to so removing such designation.

“(v) REPRESENTATIVE DEFINED.—In this subparagraph, the term ‘representative’ includes an officer, official, or spokesman of the organization and any person who directs, counsels, commands or induces the organization or its members to engage in terrorist activity. The determination by the Secretary of State or the Attorney General that an alien is a representative of a terrorist organization shall be subject to judicial review.”

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 612. DENIAL OF ASYLUM TO ALIEN TERRORISTS.

(a) IN GENERAL.—Section 208(a) of the Immigration and Nationality Act (8 U.S.C. 1158(a)) is amended by adding at the end the following: “The Attorney General may not grant an alien asylum if the Attorney General determines that the alien is ex-

cludable under subclause (I), (II), or (III) of section 212(a)(3)(B)(i) or deportable under section 241(a)(4)(B).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and apply to asylum determinations made on or after such date.

SEC. 613. DENIAL OF OTHER RELIEF FOR ALIEN TERRORISTS.

(a) WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by adding at the end the following new sentence: “For purposes of subparagraph (D), an alien who is described in section 241(a)(4)(B) shall be considered to be an alien for whom there are reasonable grounds for regarding as a danger to the security of the United States.”.

(b) SUSPENSION OF DEPORTATION.—Section 244(a) of such Act (8 U.S.C. 1254(a)) is amended by striking “section 241(a)(4)(D)” and inserting “subparagraph (B) or (D) of section 241(a)(4)”.

(c) VOLUNTARY DEPARTURE.—Section 244(e)(2) of such Act (8 U.S.C. 1254(e)(2)) is amended by inserting “under section 241(a)(4)(B) or” after “who is deportable”.

(d) ADJUSTMENT OF STATUS.—Section 245(c) of such Act (8 U.S.C. 1255(c)) is amended—

(1) by striking “or” before “(5)”, and

(2) by inserting before the period at the end the following: “, or (6) an alien who is deportable under section 241(a)(4)(B)”.

(e) REGISTRY.—Section 249(d) of such Act (8 U.S.C. 1259(d)) is amended by inserting “and is not deportable under section 241(a)(4)(B)” after “ineligible to citizenship”.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to applications filed before, on, or after such date if final action has not been taken on them before such date.

Subtitle B—Expedited Exclusion

SEC. 621. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

(a) IN GENERAL.—Subsection (b) of section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended to read as follows:

“(b)(1)(A) If the examining immigration officer determines that an alien seeking entry—

“(i) is excludable under section 212(a)(6)(C) or 212(a)(7), and

“(ii) does not indicate either an intention to apply for asylum under section 208 or a fear of persecution,
the officer shall order the alien excluded from the United States without further hearing or review.

“(B) The examining immigration officer shall refer for an interview by an asylum officer under subparagraph (C) any alien who is excludable under section 212(a)(6)(C) or 212(a)(7) and has indicated an intention to apply for asylum under section 208 or a fear of persecution.

“(C)(i) An asylum officer shall promptly conduct interviews of aliens referred under subparagraph (B).

“(ii) If the officer determines at the time of the interview that an alien has a credible fear of persecution (as defined in clause (v)), the alien shall be detained for an asylum hearing before an asylum officer under section 208.

“(iii)(I) Subject to subclause (II), if the officer determines that the alien does not have a credible fear of persecution, the officer shall order the alien excluded from the United States without further hearing or review.

“(II) The Attorney General shall promulgate regulations to provide for the immediate review by a supervisory asylum office at the port of entry of a determination under subclause (I).

“(iv) The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien’s choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not delay the process.

“(v) For purposes of this subparagraph, the term ‘credible fear of persecution’ means (I) that it is more probable than not that the statements made by the alien in support of the alien’s claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

“(D) As used in this paragraph, the term ‘asylum officer’ means an immigration officer who—

“(i) has had professional training in country conditions, asylum law, and interview techniques; and

“(ii) is supervised by an officer who meets the condition in clause (i).

“(E)(i) An exclusion order entered in accordance with subparagraph (A) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence.

“(ii) In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of exclusion entered under subparagraph (A).

“(2)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

“(B) The provisions of subparagraph (A) shall not apply—

“(i) to an alien crewman,

“(ii) to an alien described in paragraph (1)(A) or (1)(C)(iii)(I), or

“(iii) if the conditions described in section 273(d) exist.

“(3) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.”.

(b) CONFORMING AMENDMENT.—Section 237(a) of such Act (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1), by striking “Deportation” and inserting “Subject to section 235(b)(1), deportation”, and

(2) in the first sentence of paragraph (2), by striking “If” and inserting “Subject to section 235(b)(1), if”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act.

SEC. 622. JUDICIAL REVIEW.

(a) PRECLUSION OF JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) by amending the section heading to read as follows:

“JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION, AND SPECIAL EXCLUSION”; and

(2) by adding at the end the following new subsection:

“(e)(1) Notwithstanding any other provision of law, and except as provided in this subsection, no court shall have jurisdiction to review any individual determination, or to entertain any other cause or claim, arising from or relating to the implementation or operation of section 235(b)(1). Regardless of the nature of the action or claim, or the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or other equitable relief not specifically authorized in this subsection nor to certify a class under Rule 23 of the Federal Rules of Civil Procedure.

“(2) Judicial review of any cause, claim, or individual determination covered under paragraph (1) shall only be available in habeas corpus proceedings, and shall be limited to determinations of—

“(A) whether the petitioner is an alien, if the petitioner makes a showing that the petitioner’s claim of United States nationality is not frivolous;

“(B) whether the petitioner was ordered specially excluded under section 235(b)(1)(A); and

“(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence and is entitled to such review as is provided by the Attorney General pursuant to section 235(b)(1)(E)(i).

“(3) In any case where the court determines that an alien was not ordered specially excluded, or was not properly subject to special exclusion under the regulations adopted by the Attorney General, the court may order no relief beyond requir-

ing that the alien receive a hearing in accordance with section 236, or a determination in accordance with section 235(c) or 273(d).

“(4) In determining whether an alien has been ordered specially excluded, the court’s inquiry shall be limited to whether such an order was in fact issued and whether it relates to the petitioner.”.

(b) PRECLUSION OF COLLATERAL ATTACKS.—Section 235 of such Act (8 U.S.C. 1225) is amended by adding at the end the following new subsection:

“(d) In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 275 or section 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 236 and 242.”.

(c) CLERICAL AMENDMENT.—The item relating to section 106 in the table of contents of such Act is amended to read as follows:

“Sec. 106. Judicial review of orders of deportation and exclusion, and special exclusion.”.

SEC. 623. EXCLUSION OF ALIENS WHO HAVE NOT BEEN INSPECTED AND ADMITTED.

(a) IN GENERAL.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1251) is amended by adding at the end the following new subsection:

“(d) Notwithstanding any other provision of this title, an alien found in the United States who has not been admitted to the United States after inspection in accordance with section 235 is deemed for purposes of this Act to be seeking entry and admission to the United States and shall be subject to examination and exclusion by the Attorney General under chapter 4. In the case of such an alien the Attorney General shall provide by regulation an opportunity for the alien to establish that the alien was so admitted.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act.

Subtitle C—Improved Information and Processing

PART 1—IMMIGRATION PROCEDURES

SEC. 631. ACCESS TO CERTAIN CONFIDENTIAL INS FILES THROUGH COURT ORDER.

(a) LEGALIZATION PROGRAM.—Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)) is amended—

(1) by inserting “(i)” after “except that the Attorney General”, and

(2) by inserting after “title 13, United States Code” the following: “and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used—

“(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

“(II) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the legalization application was filed and such activity involves terrorist activity or poses either an immediate risk to life or to national security, or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant”.

(b) SPECIAL AGRICULTURAL WORKER PROGRAM.—Section 210(b) of such Act (8 U.S.C. 1160(b)) is amended—

(1) in paragraph (5), by inserting “, except as allowed by a court order issued pursuant to paragraph (6)” after “consent of the alien”, and

(2) in paragraph (6), by inserting after subparagraph (C) the following:

“Notwithstanding the previous sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used (i) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or (ii) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the special agricultural worker application was filed and such activity involves terrorist activity or poses either an immediate risk to life or to national security, or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant.”.

SEC. 632. WAIVER AUTHORITY CONCERNING NOTICE OF DENIAL OF APPLICATION FOR VISAS.

Section 212(b) of the Immigration and Nationality Act (8 U.S.C. 1182(b)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B);

(2) by striking “If” and inserting “(1) Subject to paragraph (2), if”; and

(3) by adding at the end the following new paragraph:

“(2) With respect to applications for visas, the Secretary of State may waive the application of paragraph (1) in the case of a particular alien or any class or classes of aliens excludable under subsection (a)(2) or (a)(3).”.

PART 2—ASSET FORFEITURE FOR PASSPORT AND VISA OFFENSES

SEC. 641. CRIMINAL FORFEITURE FOR PASSPORT AND VISA RELATED OFFENSES.

Section 982 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting after paragraph (5) the following new paragraph:

“(6) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States any property, real or personal, which the person used, or intended to be used, in committing, or facilitating the commission of, the violation, and any property constituting, or derived from, or traceable to, any proceeds the person obtained, directly or indirectly, as a result of such violation.”; and

(2) in subsection (b)(1)(B), by inserting “or (a)(6)” after “(a)(2)”.

SEC. 642. SUBPOENAS FOR BANK RECORDS.

Section 986(a) of title 18, United States Code, is amended by inserting “1028, 1541, 1542, 1543, 1544, 1546,” before “1956”.

SEC. 643. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act.

Subtitle D—Employee Verification by Security Services Companies

SEC. 651. PERMITTING SECURITY SERVICES COMPANIES TO REQUEST ADDITIONAL DOCUMENTATION.

(a) **IN GENERAL.**—Section 274B(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(6)) is amended—

(1) by striking “For purposes” and inserting “(A) Except as provided in subparagraph (B), for purposes”, and

(2) by adding at the end the following new subparagraph:

“(B) Subparagraph (A) shall not apply to a request made in connection with an individual seeking employment in a company (or division of a company) engaged in the business of providing security services to protect persons, institutions, buildings, or other possible targets of terrorism (as defined in section 2331(1) of title 18, United States Code).”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to requests for documents made on or after the date of the enactment of this Act with respect to individuals who are or were hired before, on, or after the date of the enactment of this Act.

TITLE VII—AUTHORIZATION AND FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for each of fiscal years 1996 through 2000 to the Federal Bureau of Investigation such sums as are necessary—

(1) to hire additional personnel, and to procure equipment, to support expanded investigations of domestic and international terrorism activities;

(2) to establish a Domestic Counterterrorism Center to coordinate and centralize Federal, State, and local law enforcement efforts in response to major terrorist incidents, and as a clearinghouse for all domestic and international terrorism information and intelligence; and

(3) to cover costs associated with providing law enforcement coverage of public events offering the potential of being targeted by domestic or international terrorists.

SEC. 702. CIVIL MONETARY PENALTY SURCHARGE AND TELECOMMUNICATIONS CARRIER COMPLIANCE PAYMENTS.

Public Law 103-414 is amended by adding at the end the following:

“TITLE IV—CIVIL MONETARY PENALTY SURCHARGE AND TELECOMMUNICATIONS CARRIER COMPLIANCE PAYMENTS

“SEC. 401. CIVIL MONETARY PENALTY SURCHARGE.

“(a) IMPOSITION.—Notwithstanding any other provision of law, and subject to section 402(c) of this title, a surcharge of 40 percent of the principal amount of a civil monetary penalty shall be added to each civil monetary penalty at the time it is assessed by the United States or an agency thereof.

“(b) APPLICATION OF PAYMENTS.—Payments relating to a civil monetary penalty shall be applied in the following order: (1) to costs; (2) to principal; (3) to surcharges required by subsection (a) of this section; and (4) to interest.

“(c) EFFECTIVE DATES.—(1) A surcharge under subsection (a) of this section shall be added to all civil monetary penalties assessed on or after October 1, 1995, or the date of enactment of this title, whichever is later.

“(2) The authority to add a surcharge under this section shall terminate on October 1, 1998.

“(d) LIMITATION.—The provisions of this section shall not apply to any civil monetary penalty assessed under title 26, United States Code.

“SEC. 402. DEPARTMENT OF JUSTICE TELECOMMUNICATIONS CARRIER COMPLIANCE FUND.

“(a) ESTABLISHMENT OF FUND.—There is hereby established in the United States Treasury a fund to be known as the Department of Justice Telecommunications Carrier Compliance Fund (hereinafter referred to as ‘the Fund’), which shall be available to the Attorney General to the extent and in the amounts authorized by subsection (c) of this section to make payments to telecommunications carriers, as authorized by section 109.

“(b) OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, United States Code, the Attorney General may credit surcharges added pursuant to section 401 of this title to the Fund as offsetting collections.

“(c) REQUIREMENTS FOR APPROPRIATIONS OFFSET.—(1) Surcharges added pursuant to section 401 of this title are authorized only to the extent and in the amounts provided for in advance in appropriations acts.

“(2)(A) Collections credited to the Fund are authorized to be appropriated in such amounts as may be necessary, but not to exceed \$100,000,000 in fiscal year 1996, \$305,000,000 in fiscal year 1997, and \$80,000,000 in fiscal year 1998.

“(B) Amounts described in subparagraph (A) of this paragraph are authorized to be appropriated without fiscal year limitation.

“(d) TERMINATION.—(1) The Attorney General may terminate the Fund at such time as the Attorney General determines that the Fund is no longer necessary.

“(2) Any balance in the Fund at the time of its termination shall be deposited in the general fund of the Treasury.

“(3) A decision of the Attorney General to terminate the Fund shall not be subject to judicial review.

“SEC. 403. DEFINITIONS.

“For purposes of this title, the terms ‘agency’ and ‘civil monetary penalty’ have the meanings given to them by section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, Oct. 5, 1990, 104 Stat. 890 (28 U.S.C. 2461 note).”.

SEC. 703. FIREFIGHTER AND EMERGENCY SERVICES TRAINING.

The Attorney General may award grants in consultation with the Federal Emergency Management Agency for the purposes of providing specialized training or equipment to enhance the capability of metropolitan fire and emergency service de-

partments to respond to terrorist attacks. To carry out the purposes of this section, there is authorized to be appropriated \$5,000,000 for fiscal year 1996.

SEC. 704. ASSISTANCE TO FOREIGN COUNTRIES TO PROCURE EXPLOSIVE DETECTION DEVICES AND OTHER COUNTER-TERRORISM TECHNOLOGY.

There is authorized to be appropriated not to exceed \$10,000,000 for each fiscal year to the Attorney General to provide assistance to foreign countries facing an imminent danger of terrorist attack that threatens the national interest of the United States or puts United States nationals at risk—

- (1) in obtaining explosive detection devices and other counter-terrorism technology; and
- (2) in conducting research and development projects on such technology.

SEC. 705. RESEARCH AND DEVELOPMENT TO SUPPORT COUNTER-TERRORISM TECHNOLOGIES.

There are authorized to be appropriated not to exceed \$10,000,000 to the National Institute of Justice Science and Technology Office—

- (1) to develop technologies that can be used to combat terrorism, including technologies in the areas of—
 - (A) detection of weapons, explosives, chemicals, and persons;
 - (B) tracking;
 - (C) surveillance;
 - (D) vulnerability assessment; and
 - (E) information technologies;
- (2) to develop standards to ensure the adequacy of products produced and compatibility with relevant national systems; and
- (3) to identify and assess requirements for technologies to assist State and local law enforcement in the national program to combat terrorism.

TITLE VIII—MISCELLANEOUS

SEC. 801. MACHINE READABLE VISAS AND PASSPORTS.

Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236) is amended—

- (1) by striking paragraphs (2) and (3) and inserting the following:
 - “(2) For fiscal years 1996 and 1997, not more than \$250,000,000 in fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any Department of State appropriation to recover the costs of the Department of State’s border security program, including the costs of—
 - “(A) installation and operation of the machine readable visa and automated name-check process;
 - “(B) improving the quality and security of the United States passport;
 - “(C) passport and visa fraud investigations; and
 - “(D) the technological infrastructure to support and operate the programs referred to in subparagraphs (A) through (C).

Such fees shall remain available for obligation until expended.

- “(3) For any fiscal year, fees collected under the authority of paragraph (1) in excess of the amount specified for such fiscal year under paragraph (2) shall be deposited in the general fund of the Treasury as miscellaneous receipts.”; and

- (2) by striking paragraph (5).

SEC. 802. STUDY OF STATE LICENSING REQUIREMENTS FOR THE PURCHASE AND USE OF HIGH EXPLOSIVES.

The Secretary of the Treasury, in consultation with the Federal Bureau of Investigation, shall conduct a study of State licensing requirements for the purchase and use of commercial high explosives, including detonators, detonating cords, dynamite, water gel, emulsion, blasting agents, and boosters. Not later than 180 days after the date of the enactment of this Act, the Secretary shall report to Congress the results of this study, together with any recommendations the Secretary determines are appropriate.

SEC. 803. COMPENSATION OF VICTIMS OF TERRORISM.

(a) **REQUIRING COMPENSATION FOR TERRORIST CRIMES.**—Section 1403(d)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(d)(3)) is amended—

- (1) by inserting “crimes involving terrorism,” before “driving while intoxicated”; and
- (2) by inserting a comma after “driving while intoxicated”.

(b) FOREIGN TERRORISM.—Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(b)(6)(B)) is amended by inserting “are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18, United States Code), or” before “are States not having”.

SEC. 804. JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES.

(a) EXCEPTION TO FOREIGN SOVEREIGN IMMUNITY FOR CERTAIN CASES.—Section 1605 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “or” at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting “; or”;

and

(C) by adding at the end the following new paragraph:

“(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that—

“(A) an action under this paragraph shall not be instituted unless the claimant first affords the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration;

“(B) an action under this paragraph shall not be maintained unless the act upon which the claim is based occurred while the individual bringing the claim was a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act); and

“(C) the court shall decline to hear a claim under this paragraph if the foreign state against whom the claim has been brought establishes that procedures and remedies are available in such state which comport with fundamental fairness and due process.”; and

(2) by adding at the end the following new subsection:

“(e) For purposes of paragraph (7) of subsection (a)—

“(1) the terms ‘torture’ and ‘extrajudicial killing’ have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

“(2) the term ‘hostage taking’ has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

“(3) the term ‘aircraft sabotage’ has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.”.

(b) EXCEPTION TO IMMUNITY FROM ATTACHMENT.—

(1) FOREIGN STATE.—Section 1610(a) of title 28, United States Code, is amended—

(A) by striking the period at the end of paragraph (6) and inserting “, or”;

and

(B) by adding at the end the following new paragraph:

“(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.”.

(2) AGENCY OR INSTRUMENTALITY.—Section 1610(b)(2) of such title is amended—

(A) by striking “or (5)” and inserting “(5), or (7)”; and

(B) by striking “used for the activity” and inserting “involved in the act”.

(c) APPLICABILITY.—The amendments made by this title shall apply to any cause of action arising before, on, or after the date of the enactment of this Act.

SEC. 805. STUDY OF PUBLICLY AVAILABLE INSTRUCTIONAL MATERIAL ON THE MAKING OF BOMBS, DESTRUCTIVE DEVICES, AND WEAPONS OF MASS DESTRUCTION.

(a) STUDY.—The Attorney General, in consultation with such other officials and individuals as the Attorney General deems appropriate, shall conduct a study concerning—

(1) the extent to which there are available to the public material in any medium (including print, electronic, or film) that instructs how to make bombs, other destructive devices, and weapons of mass destruction;

(2) the extent to which information gained from such material has been used in incidents of domestic and international terrorism;

(3) the likelihood that such information may be used in future incidents of terrorism; and

(4) the application of existing Federal laws to such material, the need and utility, if any, for additional laws, and an assessment of the extent to which the First Amendment protects such material and its private and commercial distribution.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report that contains the results of the study required by this section. The Attorney General shall make the report available to the public.

SEC. 806. COMPILATION OF STATISTICS RELATING TO INTIMIDATION OF GOVERNMENT EMPLOYEES.

(a) FINDINGS.—Congress finds that—

(1) threats of violence and acts of violence are mounting against Federal, State, and local government employees and their families in attempts to stop public servants from performing their lawful duties;

(2) these acts are a danger to our constitutional form of government; and

(3) more information is needed as to the extent of the danger and its nature so that steps can be taken to protect public servants at all levels of government in the performance of their duties.

(b) STATISTICS.—The Attorney General shall acquire data, for the calendar year 1990 and each succeeding calendar year about crimes and incidents of threats of violence and acts of violence against Federal, State, and local government employees in performance of their lawful duties. Such data shall include—

(1) in the case of crimes against such employees, the nature of the crime; and

(2) in the case of incidents of threats of violence and acts of violence, including verbal and implicit threats against such employees, whether or not criminally punishable, which deter the employees from the performance of their jobs.

(c) GUIDELINES.—The Attorney General shall establish guidelines for the collection of such data, including what constitutes sufficient evidence of noncriminal incidents required to be reported.

(d) ANNUAL PUBLISHING.—The Attorney General shall publish an annual summary of the data acquired under this section. Otherwise such data shall be used only for research and statistical purposes.

PURPOSE AND SUMMARY

On May 25, 1995, Judiciary Committee Chairman Henry J. Hyde introduced the “Comprehensive Antiterrorism Act of 1995” (H.R. 1710). The introduction of this legislation was the result of several months of study and discussion with experts as to how best provide an increased level of safety and security to the American public. The bill is a recognition that there is a need to update certain criminal statutes and amend immigration law so as to respond to the serious and growing threat of terrorism. The legislation is intended to strengthen the ability of the United States to deter terrorist acts and to punish those who engage in terrorism.

The origin of this legislation dates back several years and, unfortunately, is tied to a series of tragic events that have shocked the civilized world. Among those events, documenting the international terrorist threat, are: (1) the terrorist bombing of Pan Am 103 over Lockerbie, Scotland; (2) the kidnapping and murder of Marine Colonel William Higgins by members of the Hizballah in the Middle East; (3) the bombing of the World Trade Center in New York; and (4) the investigation leading to the arrest and conviction of Aldrich Ames, a spy whose treasonous acts have almost certainly led to the death of numerous other government operatives. With the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, on April 19, 1995, the need for this legislation was dramatically and tragically reinforced. Each of these events point to the seriousness of the terrorist threat; they also point out certain gaps in our criminal statutes.

We need to have the investigative and enforcement tools necessary to protect ourselves and to punish terrorist criminals. This legislation would establish significant and meaningful penalties for those who undertake criminal activities in the name of political change. The bill also closes certain loopholes in our immigration laws and strengthens border control efforts.

There is no more important responsibility of government than to protect the lives and safety of its citizens. The fundamental purpose of this legislation, then, is to provide our law enforcement agencies—within carefully prescribed constitutional boundaries—with the tools necessary to prevent and punish criminal terrorist enterprises.

Title I of H.R. 1710 establishes new federal criminal offenses directed at terrorist activities inside the United States. It outlaws the murder of federal employees and prohibits terrorist acts that transcend national boundaries. It provides criminal jurisdiction to the United States to investigate and prosecute terrorist offenses carried out by or against American citizens, as well as to terrorist offenses that are planned inside the United States, but carried out overseas. Title I also prohibits foreign terrorist groups from using the United States as a source of funding for their activities. It bans all fundraising activity in the United States on behalf of those organizations that are determined to be terrorist.

Title II amends current law so as to more effectively punish criminal conspiracies that can occur in a terrorist context. Our evidentiary rules correctly recognize the danger of joint criminal ventures, but only in some instances do our criminal laws allow for parallel sentences to be imposed for both the substantive offense and the conspiracy.

Title II will increase penalties for some of the most serious and threatening criminal acts. For instance, H.R. 1710 would amend Section 844(f) of Title 18 to create mandatory minimum sentences and increased statutory maximum penalties for bombings that result in harm to innocents. For a bombing that results only in property damage, where no injury nor risk of injury occurred to any person, a potential prison term up to twenty-five years is established. When the bombing risks serious bodily injury or death, the penalty becomes no less than twenty years and up to twenty-five years in jail. If actual injury occurs, the statutory sentence range will be twenty years to forty years. Finally, if death results from the bombing, the offender will face a mandatory minimum sentence of thirty years to life imprisonment, but could be sentenced to death for the offense.¹

Title III provides additional investigative tools to our law enforcement agencies. It adds specific criminal violations—those considered traditional terrorist-type offenses—to the list of violations currently found in the wiretap statute (and upon which a wiretap may be sought). The predicate Title 18 offenses added under H.R. 1710 are: violence against foreign nations (§956 or 960); violence against officers and employees of the United States (§1114); murder of foreign and official guests or internationally protected per-

¹ Current 18 U.S.C. §844(f) simply supplies a 20 year statutory maximum sentence in all bombing cases under that section, which do not result in death, even if serious injury did result. It does provide a death penalty in capital bombing cases, but no mandatory minimum penalty.

sons (§ 1116); terrorist acts abroad (§ 2332); use of weapons of mass destruction (§ 2332a); acts of terrorism transcending national boundaries (§ 2332b); providing material support to terrorists (§ 2339A); violence at international airports (§ 37); and the felony use of explosives (§ 842). These amendments would authorize, within a valid constitutional framework, electronic surveillance of potential perpetrators of highly dangerous criminal activity.² It also modifies the emergency and multipoint or “roving” wiretap provisions contained in current law. 18 U.S.C. 2518(7), (11). These amendments are consistent with current Fourth Amendment jurisprudence.

Title III also establishes a new definition of terrorism that will apply to international and domestic terrorist offenses, alike. Currently, Title 18 only defines international terrorism. See 18 U.S.C. § 2331. Like the existing definition, the new definition does not create any new federal crimes. It does not confer federal jurisdiction over any act, if the United States does not already have criminal jurisdiction over that act. Also, it does not create any new criminal offenses. It simply categorizes certain existing federal crimes as “terrorist” if motivated to affect the conduct of government or social policy. It is necessary to define this category of offenses because there are three specific areas in the criminal code that rely on a statutory definition of terrorism: (a) the Attorney General’s reward authority in terrorism cases; (b) civil suits that can be pursued that arise out of a terrorist act; and (c) sentencing enhancement.

Title IV strengthens our criminal laws with respect to the unlawful possession, use, transfer, and trafficking in nuclear materials. The break-up of the former Soviet Union has caused a significant increase in the unlawful distribution of nuclear materials throughout the world. This title will help protect against unchecked availability of these materials to terrorists and other criminal offenders.

Title V codifies and implements the “Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.” This title requires that all plastic explosives manufactured, transported, or possessed, after a date certain, must contain particular chemical agents that will make them easier to detect prior to detonation.

Title VI makes needed, overdue changes in our immigration laws. It establishes new procedures for the removal of aliens engaged in or likely to engage in terrorist activity. These procedures would allow the government to use classified information to deport terrorists, without risking the public disclosure of that information. Thus, the evidence can be used without risking a disclosure that would jeopardize the national security interests of the United States or would likely cause serious injury or death.

Currently, the immigration laws do not allow any foreign national, terrorist or not, to be deported from the United States without giving that alien access to all information supporting the case for deportation. In situations where classified, and highly sensitive

²It should be noted that the wiretap statute is not solely the domain of federal law enforcement agencies. State and local law enforcement agencies can also use these statutes for their investigations, as well. So, authorizing these additions to the wiretap statutory scheme will enable and empower all of America’s law enforcers to combat terrorism at the investigatory level, before catastrophe strikes.

information is provided to the United States by a foreign government, or by an individual who fears for his life, the government is prevented from removing the terrorist or potential terrorist from the United States. This is true no matter how credible and reliable the classified information that the foreign national is, in fact, a terrorist.

Thus, the provisions contained in Title VI will allow the government, for deportation purposes only, to utilize the classified information against foreign nationals alleged to be terrorists. That finding must be made by a U.S. district court judge. Before the judge can order the alien's deportation, the judge must find that there is clear and convincing reliable evidence supporting the terrorist allegation.³

Title VI, section 621, also establishes an expedited asylum procedure for those individuals who arrive in the United States without proper immigration documents and fail to demonstrate a credible fear of persecution in their countries of origin. This provision would assist in discouraging alien terrorists from seeking asylum in the United States.

Section 623 of title VI subjects illegal aliens to exclusion from the United States following an administrative adjudication where the alien is found to have unlawfully entered the United States. Once such a finding is made, the alien will be subject to expulsion, subject only to administrative review of the exclusion order and habeas corpus protections. This type of expedited expulsion procedure will apply regardless of the length of time the illegal entrant has been unlawfully present within the United States. The provision recognizes that there is an obvious and fundamental difference between aliens, who entered the United States lawfully and later become deportable, and those whose initial entry was wholly illegal.

Title VII authorizes funding for the Federal Bureau of Investigation to hire additional personnel to support law enforcement efforts aimed at terrorist activity. These provisions also would authorize the establishment of a domestic counterterrorism center and finance other additional costs associated with preventive efforts by federal law enforcement to interdict future terrorist crimes.

Section 702 proposes a civil monetary penalty surcharge as a means of funding essential technologies so that law enforcement will be provided with an on-going capability to engage in legitimate electronic surveillance. With the dawn of digital telecommunications technologies, the effectiveness of this law enforcement tool is jeopardized. In the 103rd Congress, the "Digital Telephony Act"

³The Supreme Court has stated that permanent legal resident aliens enjoy a greater liberty interest than other classes of aliens in remaining in the United States, see *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1979); see also *Rafeedie v. Immigration and Naturalization Service*, 880 F.2d 506, 520, 522 (D.C. Cir. 1989). In light of this, additional procedural protections are supplied for those particular aliens facing deportation under this special procedure. For those individuals, a special attorney will be selected from a panel of attorneys who have been given security clearances by the government. The attorney will be appointed by the presiding judge. The special attorney will have an opportunity to review all of the classified information and to challenge the veracity and reliability of the classified information supporting the terrorist allegation. The appointment of the special attorney will benefit the court in its determination of the truth of the underlying allegations informing its decision of whether or not to deport the foreign national. The legal permanent resident alien also benefits from this additional process because he is given an opportunity to have the classified facts challenged by cross-examination. He can be secure in the knowledge that he will not suffer deportation without having the evidence against him directly confronted by the special attorney.

was passed (Pub. L. 103-414). That law established the policy that the United States would assume the responsibility to pay for the development of new digital telecommunications technologies for surveillance purposes. The monies raised from the surcharge would be deposited into a telecommunications trust fund, subject to annual appropriations.

Sections 703, 704 and 705 also authorize various appropriations that will train and enable local emergency departments to more effectively respond to the terrorist threat, and to facilitate the development of counterterrorism technologies.

Title VIII deals with miscellaneous law enforcement issues. Importantly, section 801 provides a funding mechanism for the development of machine readable visas and passports, which will only be used to enhance border protection.

Section 804 would amend the Foreign Sovereign Immunities Act so as to grant federal court jurisdiction over cases brought by U.S. citizens seeking damages against a foreign state for certain acts. Specifically, it would authorize suits alleging extrajudicial killing, torture, aircraft sabotage or hostage-taking undertaken by, or on behalf of, a foreign government. The plaintiff must have been a U.S. citizen at the time of the state-sponsored terrorist action.

In summary, H.R. 1710 would provide law enforcement with the necessary capabilities to combat terrorism. Most importantly, it does so within carefully defined constitutional parameters. This bill provides practical, reasonable, innovative methods and tools for law enforcement officers confronted by the ever-expanding threat of terrorism.

BACKGROUND AND NEED FOR THE LEGISLATION

Terrorism potentially affects all Americans, both at home and abroad. It threatens our public safety, restricts the freedom to travel, and reduces our sense of personal security. Nothing is more potentially threatening or destructive. Innocents are annihilated. Families are destroyed. There are numerous tragic examples of terrorism's victims, including:

- the bombing of a German discotheque killing American military personnel;
- the bombing of the U.S. Embassy in Beirut;
- the bombing of Pan Am Flight 103;
- the hostage takings of Americans in the Middle East;
- the torture and murder of U.S. Marine Colonel William "Rich" Higgins;
- the murder of American tourist Leon Klinghoffer;
- the murders of American Foreign Service personnel in Karachi, Pakistan;
- the murders of CIA employees at the gates of the CIA in McLean, Virginia; and
- the 10 bombings in the Washington, D.C. area since 1982 by estranged segments of our society, each advancing a different radical political cause.

All of these events, and numerous others like them, underscore our vulnerability to random, unpredictable acts of terrorism. We need only observe the poison gassing of the Tokyo subway system, the decapitation of the Norwegian tourist in India, and the recent

bombings near tourist attractions in Paris, to understand that the victims of terrorism typically have no relationship to the cause motivating the crime.

Because of America's successes economically and militarily, the United States is a particularly attractive target for terrorists. Terrorists hope that their attacks on U.S. citizens or U.S. military personnel will bring publicity and attention to their cause.

In 1993, a group of Iraqi operatives were discovered plotting the assassination of former President George Bush, which was to occur during his private visit to the Emirate of Kuwait.⁴ Also in 1993, a transnational group of terrorists was caught plotting to bomb UN buildings, federal facilities, and the Lincoln and Holland tunnels in New York City. Those transnational conspirators were recently convicted by a federal jury in New York City of attempting to wage "an urban guerilla holy war" against the United States. Also, U.S. intelligence sources learned of an international conspiracy to bomb several American airliners that were scheduled to depart from the Philippine Islands. As a result, major losses in human life were averted. Sadly, however, that very same year witnessed the murder of six people, serious injury to thousands more, plus more than half a billion dollars in property damage in the heart of Manhattan, when a transnational terrorist group's car-bomb exploded in the parking garage beneath the World Trade Center.

In 1994, the FBI disrupted a homegrown terrorist conspiracy of at least two men associated with a "militia" group—the "Patriots Council"—in Minneapolis. Those men planned to create and release Ricin, an extremely toxic and effective neurotoxin—made from castor beans—against law enforcement personnel in that locality.

Then, in 1995, on April 19th, just thirteen days after the Judiciary Committee's first hearing focusing on the terrorist threat, 168 people, including dozens of children, were indiscriminately slain in downtown Oklahoma City. The device used was a 5,000 pound bomb, which was created from ammonium nitrate (a commonly used and very effective fertilizer), fuel oil, and an acceleration device. That bomb ripped off the entire face of the Alfred P. Murrah Federal Building, and the entire nation mourned.

This nation, and her law enforcement authorities—federal, state, and local—must be prepared to respond effectively, and immediately, to terrorist acts when they occur. But, more importantly, law enforcement at all levels must be given reasonable and legitimate investigative tools to enhance their capability of thwarting, frustrating, and preventing terrorist acts before they result in death and destruction. Looking to past successes, without recognizing the ever-changing face of terrorism and its technologies, would be foolhardy.

In responding to the terrorist threat, Congress must do whatever it can, consistent with our constitutional framework, to deny terrorist criminals what they most desire: widespread fear and inaction. Congress must provide the necessary tools to law enforcement to successfully deter terrorism, or when it takes place, to prosecute and punish such crimes.

⁴In 1991, President Bush organized and led the world community in a successful military effort against Iraq for its unprovoked aggression against the Emirate of Kuwait.

TERRORIST FUNDRAISING ACTIVITIES

The trademark of the terrorist is to paralyze the operations of government by substituting guns, bombs, torture, or hijacking, for legitimate political discourse. The bombings of the Murrah Building and the World Trade Center dramatically demonstrate the need to consider measures aimed at enhancing the security of the United States.

Among other things, section 102 of H.R. 1710 would strictly prohibit terrorist fundraising in the United States. Ironically, despite many terrorists' pronounced hatred for the United States, terrorist organizations have recognized this country's potential as a source of funds for their illegal activities.

Terrorist organizations have developed sophisticated international networks that allow them great freedom of movement, and opportunity to strike, including inside the United States. They are attracting a more qualified cadre of "believers" with greater technical skills. Several terrorist groups have established footholds within ethnic or resident alien communities in the United States. Many of these organizations operate under the cloak of a humanitarian or charitable exercise, or are wrapped in the blanket of religion. They use the mantle of religion to protect themselves from scrutiny, and thus operate largely without fear of recrimination. This legislation severely restricts the ability of terrorist organizations to raise much needed funds for their terrorist acts within the United States. As a matter of strict public policy, the United States must not be used as a staging ground for those who seek to commit acts of terrorism against persons in other countries. The Committee is confident that these provisions are wholly consistent with our Constitution.

The Supreme Court did recognize the confluence of First Amendment rights and law enforcement investigations in *City of Houston v. Hill*, 482 U.S. 451, 471 (1987), when it noted:

We are mindful that the preservation of liberty depends in part upon the maintenance of social order. [citation omitted]. But the First Amendment recognizes, wisely we think, that a certain amount of excessive disorder not only is inevitable in a society committed to freedom, but must itself be protected if that freedom would survive.

But, the First Amendment does not totally preclude restrictions on speech or expressive conduct. The government has a legitimate interest, if not a compelling interest, in enforcing its criminal laws. Persons may be investigated when their speech advocates, directs, or induces, a violation of law, or manifests an intent to violate the law. In such cases, however, the government does have an obligation to carefully tailor its investigations to specifically achieve a law enforcement purpose. See *Clark v. Library of Congress*, 750 F.2d 89 (D.C. Cir. 1985).

The First Amendment protects one's right to associate with groups that are involved in both legal and illegal activities. The Supreme Court held in *Elfbrandt v. Russell*, 384 U.S. 11 (1966), that an individual cannot be restricted from joining such a group. The Court noted that, "[a] 'blanket prohibition of association with a group having both legal and illegal aims' would pose a 'real danger

that legitimate political expression or association would be impaired.”⁵ *Id.* at 15 (citing *Scales v. United States*, 367 U.S. 203, 229 (1961)).

It is important to recognize that *Elfbrandt*, and its progeny, however, are not implicated by Section 102 of H.R. 1710. This provision does not attempt to restrict a person’s right to join an organization. Rather, the restriction only affects one’s contribution of financial or material resources to a foreign organization that has been designated as a threat to the national security of the United States. The prohibition is on the act of donation. There is no proscription on one’s right to think, speak, or opine in concert with, or on behalf of, such an organization. The basic protection of free association afforded individuals under the First Amendment remains in place. The First Amendment’s protection of the right of association does not carry with it the “right” to finance terrorist, criminal activities.

The rights guaranteed by the First Amendment are also not absolute. Under our constitutional scheme of ordered liberties, no one can be absolutely free from reasonable governmental restrictions that protect the public in a broader sense.⁵ Section 102 is clearly a reasonable effort to protect our citizens and the world from terrorism, financed by fundraising activities conducted in America.

In *CSC v. Letter Carriers*, 413 U.S. 548, 567 (1973), the Supreme Court upheld a statute that substantially restricted the political activities of federal employees. The First Amendment clearly protects political speech. But the Court stated, however, that it regarded certain activities plainly governable by Congress, including the right to participate in fundraising events. The Court held that “neither the right to associate nor the right to participate in political activities is absolute.” *Id.*

Similarly, in *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court upheld the constitutionality of certain provisions of the Federal Election Campaign Act. As to the contribution provisions of the Act, the Court stated that “[t]he contribution ceilings [of the Act] serve the basic governmental interests in safeguarding the integrity of the electoral process, without impinging upon the rights of individuals and candidates to engage in political debate and discussion.” *Id.* at 84.

The government’s interest in preventing the financing of terrorist activity is certainly as great as its interest in maintaining a corruption free electoral process. “The legitimacy of the objective of safeguarding our national security is ‘obvious and unarguable.’” *Haig*, 453 U.S. 280, 305 (1981) (citing *Aptheker v. Secretary of State*, 378 U.S. 500, (1964)).

The prohibition is not based upon the message or opinions espoused by a particular organization. Rather, the criminal prohibition is based on the documented illegal acts of that organization. In *Zemel v. Rusk*, 381 U.S. 1 (1965), the Supreme Court upheld the right of the Secretary of State to validate the passports of U.S. citizens for travel to Cuba. The Secretary of State made no effort to deny passports selectively on the basis of political belief or affiliation, but simply imposed a general ban on travel to Cuba follow-

⁵ The Founding Fathers understood this. Evidence of this is the specific inclusion of the word “reasonable” in the text of the Fourth Amendment.

ing the break in diplomatic and consular relations with that country in 1961. *Id.* at 13. See also *Regan v. Wald*, 468 U.S. 222, 241 (1984).

Congress is not, in section 102 of H.R. 1710, selectively choosing which citizens can contribute funds and which cannot. The ban is based upon the terrorist acts of the foreign organization and its subgroups. The foreign organizations that are designated as terrorist are criminal enterprises. The ban is designed to protect our nation's security, and applies uniformly and equally to all persons within the United States, regardless of political, philosophical, or religious affiliation. The ban applies to any financial or material donation to any foreign group or subgroup designated as terrorist by the Secretary of State, after consultation with the Attorney General.

The test to be utilized to determine whether such a general ban is consistent with constitutional standards is found in *United States v. O'Brien*, 391 U.S. 367, 377 (1968). In *O'Brien*, the Supreme Court held that a governmental regulation is sufficiently justified if:

- (a) it is within the constitutional power of the Government;
- (b) it furthers an important or substantial governmental interest;
- (c) the governmental interest is unrelated to the suppression of free expression; and
- (d) the incidental restriction on the alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Congress has the constitutional authority to regulate interstate and foreign commerce. U.S. Const. art. I, § 8, cl. 3. It is also empowered "[t]o define and punish * * * Felonies committed on the high Seas, and Offenses against the Law of Nations." U.S. Const. art. I, § 8, cl. 10.

The ban furthers a compelling governmental interest. "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation." *Aptheker v. Secretary of State*, 378 U.S. 500 (1964).

The ban does not restrict an organization's or an individual's ability to freely express a particular ideology or political philosophy. Those inside the United States will continue to be free to advocate, think, and profess the attitudes and philosophies of the foreign organizations. They are simply not allowed to send material support or resources to those groups, or their subsidiary groups, overseas. There is no other mechanism, other than an outright prohibition on contributions, to effectively prevent such organizations from using funds raised in the United States to further their terrorist activities abroad.

Thus, after consideration of the four aforementioned factors that must be weighed, the Committee concluded that the restrictions on associational freedoms imposed by the ban are reasonable and consistent with existing case law. The prohibition is absolutely necessary to achieve the government's compelling interest in protecting the nation's safety from the very real and growing terrorist threat.

EXPANDED WIRETAP AUTHORITY

Terrorist organizations have become increasingly sophisticated in a technological sense. The primary way to prevent tragic consequences resulting from this confluence of technology and disaffection is to uncover and learn about the criminal activities during their planning stages. Evidence gathering is essential to the success of any criminal investigation and prosecution.

Enhancing the investigative tools of law enforcement officials is another basic goal of H.R. 1710. On the opening day of hearings on this measure, Congressman Carlos J. Moorhead (R-California) succinctly and wisely stated:

It's up to our government to protect the lives and property of our citizens, and it's very important with an issue such as this, where terrorist activities have been increasing, that we protect our people and * * * do whatever is necessary to make our society safe.

To this end, H.R. 1710 incorporates meaningful changes to the "Electronic Communications Privacy Act of 1986" (Pub. L. 99-508), which itself amended title III of the "Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351)." It was through the 1968 Act that statutory wiretap authority was first granted. Both OCCSSA and ECPA were enacted to protect against unauthorized interception of electronic communications by government personnel.⁶

The Committee heard testimony from numerous legal scholars and criminal law experts on the wiretap provisions contained in this legislation. This included the former Attorney General of the United States William P. Barr; former legal counsel for the Reagan Administration's U.S. State Department and district judge, the Honorable Abraham Sofaer; the Deputy Attorney General Jamie S. Gorelick; Professor James P. Fleissner, professor of law at Mercer

⁶Title 18, United States Code, establishes detailed, comprehensive procedures governing electronic surveillance, including the following:

(a) the Attorney General (or designate) must approve every application by federal law enforcement agents for any court ordered interception (18 U.S.C. § 2516);

(b) applications for wiretaps may only be sought to investigate specifically listed federal criminal offenses. (18 U.S.C. § 2516);

(c) applications must provide sufficient facts for the reviewing district court judge to make a three-tiered finding of probable cause regarding,

(1) commission of crimes by certain persons;

(2) the use of facilities or premises to be monitored by those persons; and

(3) the use of those facilities or premises by specific persons in connection with the crimes under investigation (18 U.S.C. § 2518 (1)(b), (3)(a), (b), (d));

(d) applications must state that other, less-intrusive or more traditional methods of investigation have been tried and failed, to provide the evidence expected or are impractical or dangerous (18 U.S.C. § 2518(3)(c));

(e) agents executing wiretap authorization orders must minimize their interception of communications that are not pertinent to the investigation or that are otherwise privileged communications (18 U.S.C. § 2518(5));

(f) the court orders for electronic surveillance can only authorize the interceptions for the time period needed to achieve the objective of the search, but no longer than 30 days in any event. Extensions may be granted for an additional 30 day period, only upon submission of a new application meeting all statutory requirements (18 U.S.C. § 2518(5));

(g) all records and recordings from the surveillance must be sealed and stored. Disclosure can only be made in limited and narrow circumstances, such as grand jury and trial-related proceedings (18 U.S.C. § 2518 (8), (9), (10));

(h) periodic progress reports may be required by the issuing judge in his discretion (18 U.S.C. 2518(6)); and

(i) evidence seized in violation of any of the statutory requirements can be challenged and suppressed (18 U.S.C. § 2515).

University School of Law and former chief of General Crimes Section, Criminal Division for the U.S. Attorney's Office in the Northern District of Illinois (Chicago); and Bruce Fein, former Associate Deputy Attorney General of the United States. All concurred that the modifications made to the wiretap statute in H.R. 1710 are constitutional.

The most important aspect of any law regarding a wiretap is that there is review by an independent and impartial judicial officer. The requirement that law enforcement officials obtain a warrant from a neutral judge remains unaltered.

Since the adoption of the wiretap statute in 1968, the Supreme Court has decided a number of cases involving wiretaps and the statutory scheme for authorizing them. The Court has not expressed any doubt as to the constitutionality of chapter 119 of title 18, United States Code.⁷ Furthermore, every U.S. Court of Appeals addressing the issue has affirmed the constitutionality of the wiretap scheme.⁸

Section 301 of H.R. 1710 would add certain offenses to the current list of offenses for which wiretaps can already be obtained. The current list is found at title 18, United States Code, section 2516. This amendment would authorize wiretaps in investigations involving offenses for which wiretaps cannot now be obtained, such as certain explosives violations (18 U.S.C. § 842); criminal acts from within the U.S. against foreign nations (18 U.S.C. §§ 956, 960); attacks on U.S. officials and employees, and against foreign officials (18 U.S.C. §§ 1115, 1116, 1751); other types of terrorist's offenses more recently enacted (18 U.S.C. §§ 2332, 2332a, 2339A); and violence against air transportation facilities and methods (18 U.S.C. §§ 37, 49, and 49 U.S.C. § 46502).

Section 301(b) amends section 2518(6) of title 18, United States Code, which currently allows a judge to order periodic reports of on-going electronic surveillance activity by government personnel. The report must establish a sufficient basis for continuing the wiretap activity. Currently, courts can set their own schedule for the filing of these periodic reports. Some time frames are too short or too long to be useful to law enforcement, or to the court. The preparation of the reports requires the expenditure of a substantial amount of time. If the reporting period is too short, a law enforcement agent who truly ought to be following up leads gained from the wiretap evidence, and doing physical surveillance to corroborate the facts learned from the wiretap in order to shorten the investigation period, will be ignoring those law enforcement tasks in order to fulfill the statutory obligations every few days. If the length of time is too long between reports, then a wiretap that ought to cease sooner might continue without good cause. Section 301(b) will mandate that a report be filed with the authorizing judge 15 days after the interception of communications has commenced and should provide adequate justification for continuing

⁷See *Scott v. United States*, 436 U.S. 128 (1978); *U.S. v. Donovan*, 429 U.S. 413 (1977); *U.S. v. Giordano*, 416 U.S. 505 (1974); *U.S. v. Chaney*, 416 U.S. 562 (1994); *U.S. v. Kahn*, 415 U.S. 143 (1974).

⁸See, e.g., *U.S. v. Petti* 973 F.2d 1441, 1443 (9th Cir. 1992); *U.S. v. Turner*, 528, F.2d 143, 158-59 (9th Cir. 1995) (collecting cases).

wiretap under the authorizing order. No other periodic reports will be required to be filed by the statute.

Section 306 of H.R. 1710 would amend 18 U.S.C. §2515, which is a statutory exclusionary rule for wiretap evidence that has been seized in contravention of the wiretap statutes. This amendment will make the statutory exclusionary rule for wiretap evidence coterminous with the Supreme Court's considered jurisprudential approach to the Fourth Amendment.

The Supreme Court has construed current §2515 to require exclusion of wiretap evidence where the statute violated during the seizure "was intended to play a central role in the statutory scheme" authorizing wiretap activity by law enforcement. *United States v. Giordano*, 416 U.S. 505, 528 (1974). See also *United States v. Chaney*, 416 U.S. 563 (1974). The amendment made by section 306 of this bill will bring the application of the statutory exclusionary rule found at §2515, of title 18, United States Code, into line with the Supreme Court's holdings in *United States v. Leon*, 468 U.S. 897 (1984); *Illinois v. Rodriguez*, 497 U.S. 177 (1990); *Illinois v. Krull*, 480 U.S. 340 (1987); *Massachusetts v. Sheppard*, 468 U.S. 981, 990 (1984). In those cases, the Court held that an officer's objectively reasonable belief that he or she acted in compliance with the law, or otherwise acted in good faith reliance on a warrant issued by a judge later found invalid, was sufficient to allow the admission of the evidence seized if the search and seizure were later found to be lacking legal justification.

Moreover, this amendment will allow for the admission of evidence that may have been illegally obtained by completely private individuals, not acting at the behest or urging of the government. This is thoroughly consistent with the Court's holding in *Burdeau v. McDowell*, 256 U.S. 465 (1921), and its progeny. See *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602, 614 (1989); *United States v. Jacobsen*, 466 U.S. 109, 113-14 (1984); *Coolidge v. New Hampshire*, 403 U.S. 443, 487 (1971); *Lustig v. United States*, 338 U.S. 74, 78-79 (1949); *Byars v. United States*, 273 U.S. 28, 32-33 (1927); *United States v. Kinney*, 953 F.2d 863, 865 (4th Cir. 1992).

In passing the 1986 amendments to the 1968 wiretap statutes, Congress recognized that emergency situations arise in law enforcement and that completion of necessary paperwork to obtain court authorization for electronic surveillance may take longer than the situation allows. In exigent circumstances, where (1) lives and public safety is at risk, (2) national security is threatened, or (3) organized crime activities are occurring, title 18, United States Code, section 2518(7) allows interception of communications to occur for a period of 48 hours while the necessary paperwork is being put together to justify the interception. Because terrorism⁹ conspiracies are an aggregation of the three types of emergency situations set out at section 2518(7), which are described above, section 308 adds such criminal activity to the very short list of situations where interceptions may be authorized without a prior sub-

⁹For purposes of this section, the term "terrorism" is defined at 18 U.S.C. §2331, which is amended by section 315 of this bill.

mission of the statutorily required application,¹⁰ or the prior issuance of an authorizing order.

Under current law, in order to institute an emergency wiretap, probable cause to believe that an individual has engaged in a specified criminal act must exist before interception can begin. Probable cause as to the person engaged in the criminal violation must also exist before interception can commence. An attorney for the government must file an application, under oath, with the district court within 48 hours of the beginning of the interception. The government must establish facts, in its application, that in the exercise of due diligence it could not have completed the necessary paperwork to obtain judicial authorization prior to beginning the interception.

Currently, and H.R. 1710 makes no change to this requirement, the emergency wiretap provisions found at section 2518(7) of title 18, United States Code, require the approval of the highest ranking officials¹¹ of the Department of Justice.

In the event the judge finds that probable cause did not exist prior to the interception (none of the wiretap evidence can be used to support the application), or that the government failed to establish the existence of exigent circumstances necessitating the emergency interception, whatever evidence might have been obtained during the emergency intercept period will be suppressed. These safeguards exist in addition to the statutory safeguards already set forth in the wiretap statutes.¹²

As noted above, law enforcement already currently has the authority to start a wiretap in three specifically defined emergency situations prior to obtaining a court order authorizing the interception: (a) immediate danger of death or serious bodily injury; (b) conspiracies involving immediate risks to the national security; or (c) conspiratorial activities characteristic of organized crime.

Terrorist crimes present not only catastrophic human and property losses, but they can also present real threats to the national security interests of the United States. So, in the course of one criminal act, two of the categories already covered by the emergency wiretap statutes are implicated. Given that, why is there a need to enlarge the three listed categories and create a fourth involving terrorist crimes?

Terrorist crimes are most often "quick hits" and the perpetrators are frequently very successful in escaping from the area where the crime occurred. Leads to the identity of the perpetrators also erode as quickly as they develop. Section 308 can facilitate the early

¹⁰ See 18 U.S.C. §2516, 2518.

¹¹ Only the Attorney General, Deputy Attorney General, or Associate Attorney General, can authorize the commencement of an emergency wiretap under 18 U.S.C. §2518(7). Moreover, once the particular communication being sought is obtained under this authority, the interception must immediately terminate. *Id.*

The federal wiretap statutes also authorize the interception of communications by state law enforcement officers, so long as there is a state statute authorizing such interception of communications.

Where the state authorities seek to conduct a wiretap investigation, the principal prosecuting attorney of that state, or of any political subdivision of the state, take on the obligations assigned to the Attorney General of the United States under these statutes. These state wiretap requests can be processed through the state's judicial system. A state application and order must comply in every respect with the federal wiretap statutes, however.

¹² See n.6, *supra*.

stages of the investigation and increase the prospects of apprehending the perpetrators and successfully bringing them to justice.

The emergency wiretap provision currently codified in title 18, United States Code, does not cover situations where the threat of enormous and substantial property damage is immediately present. Also, the current statute does not authorize the use of an emergency wiretap after a catastrophe has occurred. Such authority can provide invaluable evidence in the immediate aftermath of heinous crimes such as that which took place in Oklahoma City. The limitation of the current law to acts occurring prior to the commission of the crime, creates an ambiguity concerning whether the current law would cover a situation where the bomb has already exploded. The current statute would not appear to apply because there is no longer a risk to life or physical safety. Furthermore, understanding the history of the wiretap provisions, the Committee recognizes that the "organized crime" reference in the current law, includes only those actions typically undertaken by the mafia, or organizations of that type. Such activities might be listed in the RICO statute of the United States Code, 18 U.S.C. § 1963.

The emergency surveillance provision is a codification of a well-established doctrine of Fourth Amendment jurisprudence. Exigent circumstances may render impractical the obtaining of a warrant before the actual search. See *Schmerber v. California* 384 U.S. 757 (1966); *United States v. Karo*, 468 U.S. 705 (1984). Section 308 recognizes that terrorist conspiracies and acts of terrorism may give rise to exigent circumstances necessitating the seizure of evidence before a warrant can be obtained.

There is no logical difference between an emergency wiretap and a physical search that is conducted without a warrant, when there are exigent circumstances present justifying the search. In the physical search case, the government is required to prove to the judge, after the fact, that the search was allowable under the Fourth Amendment because probable cause existed prior to the search that a crime was being, or was about to be, committed, or that evidence would have been destroyed. Additionally, in such a case, the government must also establish that the exigent situation precluded it from obtaining a warrant prior to conducting the search. Likewise, the process for emergency wiretaps.

As part of the overall strategy to prevent terrorism, H.R. 1710 also proposes a modification to the wiretap statute allowing for multi-point interceptions, often referred to as "roving wiretaps." Roving wiretaps have been available to law enforcement since the enactment of ECPA.

Under the current statute, 18 U.S.C. § 2518(11), a multi-point wiretap can be obtained for both oral communications and electronic communications, but the standard to be met by the government seeking authorization is different for each type. For a court to grant a multi-point intercept order for oral communications, in addition to all other probable cause showings and statutory requirements, the government need only show that it is impractical to specifically identify the place where the criminal conversation will occur. Whereas, for electronic communication intercepts, the government must also establish to the satisfaction of the issuing judge that it is impractical to specifically identify the telephone the

target will use for his criminal conversations, and that it is the target's intent to thwart interception of his criminal conversations.

The Senate report on ECPA contained sentiments that are equally apt today.

* * * The Committee finds such a provision necessary to cover circumstances under which law enforcement officials may not know, until shortly before the communication, which telephone line will be used by the person under surveillance. * * * Situations where ordinary specification rules would not be practical would include those where a suspect moves from room to room in a hotel to avoid a bug or where a suspect sets up a meeting with another suspect on a beach or in a field. In such situations, the order would indicate authority to follow the suspect and engage in the interception once the targeted conversation occurs.

The rule with respect to "wire communications" is somewhat similar. * * * [T]he application must show that the person committing the offense has a purpose to thwart interception by changing facilities. In these cases, the court must find that the applicant has shown that such a purpose has been evidenced by the suspect. An example of a situation which would meet this test would be an alleged terrorist who went from phone booth to phone booth numerous times to avoid interception. A person whose telephone calls were intercepted who said that he or she was planning on moving from phone to phone or to pay phones to avoid detection also would have demonstrated that purpose. S. Rept. 99-541.

The examples provided in the report for each scenario provide little distinction themselves. Either a person moves from room to room, the specific room unknown to law enforcement until immediately before the criminal conversation is to occur; or the suspect moves from phone booth to phone booth.

Today's rapidly changing telecommunications technology, and that expected to emerge in the near future, can easily leave federal, state, and local law enforcement unable to follow and track even the unsophisticated criminals who readily move from telephone line to telephone line in furtherance of their criminal activity. Thus, keeping with the principle that law enforcement should "follow the criminal," the proposed modification to the current multi-point wiretap statute would allow our investigating agents to seek and utilize the multi-point wiretap technique when the target's conduct has the effect of defeating more traditional types of electronic surveillance.

The "roving" or multi-point wiretap provision does not weaken current law or alter the constitutional requirements needed to be met before a wiretap order can be issued. Rather, as with the emergency wiretap amendment in section 308, this provision makes a small change in the statutory scheme in order to bring the law in line with the realities faced by today's law enforcement officials. It simply removes the unreasonable and impractical hurdle—not required by the Constitution—that law enforcement demonstrate that a criminal using a number of different phones to further his crimi-

nal enterprise switches phones intentionally to thwart detection by law enforcement. It must be stressed that all other statutory protections, in addition to the Fourth Amendment's requirements, remain in effect.¹³

The availability of multi-point wiretaps has specifically survived constitutional scrutiny.¹⁴ The Supreme Court has observed that "crime has changed, as have the means of law enforcement; thus, the Fourth Amendment's prohibition against unreasonable searches and seizures must be interpreted in light of contemporary norms and conditions." *Steagald v. United States*, 451 U.S. 204, 217 n.10 (1981).

In addressing the particularity requirement of the Fourth Amendment in the context of a roving wiretap, the *Bianco* court noted that the Supreme Court refuses to read that language of the Fourth Amendment literally, "preferring instead a flexible approach designed to keep pace with a technologically advancing society." *United States v. Bianco*, 998 F.2d 1112, 1123 (2d Cir. 1993).

A court authorizing a roving wiretap is required to take into consideration whether the application and order specifies a reasonably limited geographic area, the number of phones to be involved, and also whether the time within which the interception is to be accomplished is reasonably feasible. The roving wiretap is truly—in practice—no different than identifying in a single application multiple phones, or the potential use of multiple phones, by a single individual, in a limited geographical area that will be tapped.

The Committee expects that this provision will not significantly increase the number of multi-point taps, nor impose heavy new burdens on telecommunication service providers. In passing the ECPA, Congress affirmed that multi-point taps would be rare and utilized only if feasible.

ECPA ensures that the telephone companies will provide assistance to law enforcement when requested, if technologically feasible.¹⁵ The reason the government is required to limit the geographic area to be covered by the multi-point authorization order is so that the service provider's assistance and cooperation is not rendered technically infeasible. The Committee expects that law enforcement will continue its current practice of consultation with the affected telephone company employees in advance of seeking an order for a multi-point interception.

Requiring proof that the person to be intercepted has an intent to thwart interception for electronic and wire communications, but not for oral communications, is inconsistent, illogical, and unwise. People are no longer limited to the use of a telephone solely in their homes or offices. We live in a world of cellular telephones, pagers, portable fax machines, and portable computers. Section 309 is a recognition of these technological realities.

¹³ See n.6, *supra*.

¹⁴ See *United States v. Bianco*, 998 F.2d 1112 (2d Cir. 1993); *United States v. Silberman*, 732 F. Supp. 1057 (S.D. Cal. 1990), *aff'd sub nom. United States v. Petti*, 973 F.2d 1441 (9th Cir. 1992); *United States v. Ferrara*, 771 F. Supp. 1266 (D. Mass. 1991).

¹⁵ See 18 U.S.C. § 2518(12).

IMMIGRATION RELATED REFORMS TO DETER TERRORISM

The removal of alien terrorists from the United States, and the prevention of alien terrorists from entering the United States in the first place, present among the most intractable problems of immigration enforcement. The stakes in such cases are compelling: protecting the very lives and safety of U.S. residents, and preserving the national security. Yet, alien terrorists, while deportable under section 241(a)(4)(D) of the INA, are able to exploit many of the substantive and procedural provisions available to all deportable aliens in order to delay their removal from the United States. In addition, alien terrorists, including representatives and members of terrorist organizations, often are able to enter the U.S. under a legitimate guise, despite the fact that their entry is inimical to the national interests of the United States. In several noteworthy cases, the Department of Justice has consumed years of time and hundreds of thousands (if not millions) of dollars seeking to secure the removal of such aliens from the United States.

Starting in the first Administration of President Reagan, the Department of Justice has sought reform of immigration law and procedures to better enable this country to protect itself against the threat of alien terrorists. The chief target of these reforms are the statutory and administrative protections given to such aliens, many of which are not required by the due process clause of the Fifth or Fourteenth Amendment or any other provision of law, that enable alien terrorists to delay their removal from the United States.

The need for special procedures to adjudicate deportation charges against alien terrorists is manifest. Terrorist organizations have developed sophisticated international networks that allow their members great freedom of movement and opportunity to strike, including within the United States. They are attracting a more qualified cadre of adherents with increasing technical skills. Several terrorist groups have established footholds within immigrant communities in the United States.

The nature of these groups tend to shield the participants from effective counterterrorism efforts—including the most basic measure of removing them from our soil. The United States relies heavily upon close and continued cooperation of friendly nations who provide information on the identity of such terrorists. Such information will only be forthcoming if its sources continue to be protected. Thus, it is essential to the national security of the United States that procedures be established to permit the use of classified information in appropriate cases to establish the deportability of an alien terrorist.

Such procedures also must be crafted to meet constitutional requirements. The government's efforts to safeguard lives and property and to protect the national security may be contested on the grounds that they conflict with the procedural rights of aliens. The interests of the government must therefore be balanced against the legitimate rights of those privileged to be present within the United States.¹⁶

¹⁶ *Fiallo v. Levi*, 406 F. Supp. 162 (S.D.N.Y.), *aff'd*, 430 U.S. 787 (1975); *Jean v. Nelson*, 472 U.S. 846, *aff'd*, 727 F.2d 957 (11th Cir. 1984); *Kleindienst v. Mandel*, 408 U.S. 753 (1972) (*sup-*

Subtitle A of Title VI (sections 601 and 602) provide that in cases where the use of normal removal proceedings would risk national security, the deportation charges against suspected alien terrorists may be adjudicated in special procedures conducted before one of 5 Federal district court judges specially appointed to serve in such cases by the Chief Justice of the Supreme Court. The special hearings will be open to the public but conducted to ensure the confidentiality of classified national security information. Aliens have the right to court-appointed attorneys, to confront adverse evidence, and to present evidence. The judges may consider classified evidence in camera, and provide a summary of such evidence to the alien, unless providing the summary would harm to the national security or to any person. Aliens may be detained in most cases throughout the proceeding and expeditiously removed after entry of an order of removal.

These special procedures are intended to address the rare circumstance when the government is not able to establish the deportability of an alien under section 241(a)(4)(D) of the INA without recourse to evidence the disclosure of which would pose a risk to the national security of the United States. They are exclusively to be used in cases where the alien is deportable under section 241(a)(4)(D). The Committee expects that these procedures will be used infrequently, and that the government will exercise utmost discretion in seek to initiate proceedings under Subtitle B. Moreover, with the enactment of the provisions of Title I and Title II directed at securing the nation's borders and preventing immigration-related crimes, and the remaining provisions of Title III which streamline the administrative removal process, the numbers of cases in which these special deportation procedures must be used hopefully will be further diminished.

These special procedures are designed to protect the "fundamental requirement of due process[:] * * * the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" ¹⁷ The Supreme Court has acknowledged that "'due process is flexible and calls for such procedural protections as the particular situation demands.'" ¹⁸ The Court's decisions indicate that three factors must be weighed in determining if the procedures to which one is subjected justifying a deprivation of rights meets the constitutional threshold.

[T]he private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the * * * burdens that the additional or substitute procedural requirement would entail.¹⁹

porting the proposition that alien's presence in U.S. is privilege extended by Congress and not fundamental right.) See also *Alvarez v. INS*, 539 F.2d 1220 (9th Cir.), cert. denied, 430 U.S. 918 (1976) (applying rational basis test to equal protection claim for impermissible classification of aliens).

¹⁷ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)).

¹⁸ *Mathews*, 424 U.S. at 334 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

¹⁹ *Mathews v. Eldridge*, 424 U.S. 319, 335, 347 (1976).

These factors have been taken into full account in drafting section 321.

First, section 601 recognizes that an alien present in the U.S. has a constitutional liberty interest to remain in the United States, and that this liberty interest is most significant in the case of a lawful permanent resident alien.

[I]t is clear that, in defining an alien's right to due process, the Supreme Court is concerned with whether he is a permanent resident. * * * A permanent resident alien [has] a stake in the United States substantial enough to command a higher level of protection under the due process clause before he may be deported. The result of such an action after all, may be to separate him from family, friends, property, and career, and to remit him to starting a new life in a new land. * * * [E]ven a manifest national security interest of the United States cannot support an argument that [a permanent resident alien] is not entitled, as a threshold matter, to protection under the due process clause. Once across that threshold, the calculus of just how much process is due involves a consideration of the Government's interests in dispensing with procedural safeguards.²⁰

No alien, in particular a permanent resident alien, would be subject to deportation without an opportunity to contest that deportation. Even if the case where confidential information may be used without disclosure to the alien, section 601 provides protections adequate under the due process clause of the Fifth and Fourteenth Amendment.

Second, the risk of an erroneous deprivation of the liberty interest is remote. The government's burden of proof, as in regular deportation proceedings, is to establish by clear and convincing evidence that the alien is deportable. This determination, moreover, is to be made in the first instance by an Article III judge, which arguably enhances the due process provided to an alien terrorist above that provided in regular deportation proceedings, where the immigration judge is an employee of the Department of Justice. Furthermore, the alien is entitled to be represented by counsel at government expense, a privilege that is not extended to aliens under Title II of the INA, which stipulates that the alien's representation is to be at no expense to the government. Finally, the determination is subject to appellate review. As discussed in greater detail below, the risk of error arising from in camera and ex parte consideration of classified evidence is minimized through the procedural safeguards limiting reliance on such evidence without any disclosure to the alien.

Third, there can be no gainsaying the compelling nature of the government's interest in the prompt removal of alien terrorists from U.S. soil, or in protecting the ability of the government to collect and rely upon confidential information regarding alien terror-

²⁰ *Rafedie v. INS*, 880 F.2d 506, 522 (D.C. Cir. 1989). See also *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("[O]nce an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly."); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

ists who may be present in the United States. Piercing this bill's limited veil of secrecy over classified evidence will clearly make it more difficult to gather evidence against suspected terrorists and to convince international sources that such information will be secure in the hands of our government, and ultimately lead to alien terrorists being able to remain in the United States to harm our citizens and lawful residents.

The most salient distinction between the procedures constructed in section 601 and those normally available under Title II of the INA is the provision for use of classified information. All of the procedures and procedural protections in section 601 flow from this fundamental policy decision: that reliable and relevant classified information should be available to be used to establish the deportability of an alien terrorist. This policy in itself causes no constitutional difficulty, and the protections against abuse of that policy by the government are more than adequate to protect the constitutional interests at stake.

The Supreme Court and lower federal courts have upheld the authority of the INS to use classified information in the cases of aliens who seek discretionary relief from deportation, without disclosing such information to the applicant.²¹ Thus, use of nondisclosed classified information to inform a court's decision whether or not to order deportation is not unconstitutional on its face.

Furthermore, the clear intent of section 601 is that all information used to support the charge of deportability will be disclosed to the applicant. This intent is most clearly seen by considering the substantive and procedural hurdles the government must satisfy before confidential information may be considered in camera as part of the record. First, in order to even convene a special deportation proceeding, the government must present a petition personally approved by the Attorney General or the Deputy Attorney General to one of the federal district court judges serving on the special deportation court. Placing these proceedings before an Article III judge provides such aliens an enhanced measure of due process that is not accorded to other deportable aliens, whose cases are heard by administrative judges under the direction of the Attorney General.

Second, the proceeding cannot commence unless the judge finds probable cause to believe that the alien has been correctly identified, is a terrorist, and that the use of normal deportation procedures under Title II of the INA would pose a risk to national security.

Third, the Department of Justice has the burden to prove by clear and convincing evidence that the alien is deportable. Classified information may be presented in camera and ex parte. However, a summary of such evidence sufficient to inform the alien of the nature of the evidence and to permit the alien to prepare a defense must be approved by the judge and provided to the alien. If the judge does not believe the summary to be adequate, and the

²¹ *Jay v. Boyd*, 351 U.S. 345, 358–60 (1956); *Suciu v. INS*, 755 F.2d 127, 128 (8th Cir. 1985) (per curiam). See also *Naji v. Nelson*, 113 F.R.D. 548, 551–552 (N.D. Ill. 1986).

government cannot correct the deficiencies, the proceedings will be terminated.

Fourth, the only circumstance in which the consideration of classified information in camera can proceed without providing a summary to the alien is if the judge finds that the continued presence of the alien in the United States, or the provision of the summary, would cause serious and irreparable harm to the national security or death or serious bodily injury to any person. This is, intentionally, a strict standard, designed to emphasize the clear policy of this legislation that the alien have appropriate notice of the evidence against him and an opportunity to prepare and present a defense.

Fifth, in the case of an alien lawfully admitted for permanent residence, section 601 provides that confidential information shall be disclosed solely to a special attorney appointed for this purpose by the judge. The attorney may not disclose such information to the alien or any other party under pain of fine and imprisonment, but may present all relevant arguments against the admissibility, relevance, credibility, or probative value of the evidence.

As noted previously, the Constitution does not forbid the use of classified information in rendering decisions on the right of an alien to remain in the United States. The procedures established in section 601 permit use of classified information in deportation proceedings, while protecting to the maximum extent possible consistent with the classified nature of such information the ability of the alien to examine, confront, and cross-examine such evidence. Any further protection of the alien's rights in this regard would eviscerate the ability of the government to rely upon such information and protect its classified nature, an objective that is grounded national interests of the most compelling nature.

Subtitle A (sections 611 through 613) also makes representatives and members of organizations designated by the Secretary of State as terrorist organizations inadmissible to the United States and ineligible for asylum, withholding of deportation, suspension of deportation (cancellation of removal), voluntary departure, and registry.

The object of preventing terrorist aliens from entering the U.S. is equally important to the national interest as the removal of alien terrorists. On this question, the demands of due process are negligible, and Congress is free to set criteria for admission and screening procedures that it deems to be in the national interest. "Aliens seeking admission to the United States cannot demand that their application for entry be determined in a particular manner or by use of a particular type of proceeding. *For those aliens, the procedure fixed by Congress is deemed to be due process of law.*" *Rafeedie v. INS*, 880 F.2d 506, 513 (D.C. Cir. 1989) (citing *Knauff v. Shaughnessy*, 338 U.S. 537 (1950)) (emphasis in original). The *Knauff* Court observed "that an initial entrant has no liberty (or any other) interest in entering the United States, and thus has no constitutional right to any process in that context; whatever Congress by statute provides is obviously sufficient, so far as the Constitution goes." *Rafeedie*, 880 F.2d at 520. "Our starting point, therefore, is that an applicant for initial entry has no constitutionally cognizable liberty interest in being permitted to enter the United States." *Id.*

Under these provisions, an alien will be inadmissible if the alien is a representative of a terrorist organization or a member of an organization that the alien knew or should have known was a terrorist organization. This distinction is intended to ensure that aliens who are most active as directors, officers, commanders, or spokespersons for terrorist organizations are strictly barred from entering the United States. An alien who is merely a member of a terrorist organization will be considered under a slightly less strict standard that incorporates a scienter requirement that the alien knew or should have known that the organization is terrorist in nature. Thus, an alien innocent of involvement with or knowledge of terrorist activity on the part of an organization of which he or she was merely a member would not necessarily be inadmissible to the United States.

An organization will be considered “terrorist” for purposes of these provisions only if it has been designated as such by the Secretary of State after consultation with the Attorney General, and after consultation with the Committees on the Judiciary of the House of Representatives and the Senate. It is important to stress that only foreign organizations and subsidiary foreign groups that have engaged in, or are engaging in, terrorist activity (as that term is currently defined in the INA) and whose acts pose a threat to the national security of the United States, can be so designated. The designation is subject to judicial review upon its being made public and, by law, may be removed by Congress.

Subtitle B of H.R. 1710 provides for the expedited exclusion of aliens who arrive seeking entry into the United States without valid entry documents. Section 621 provides that an arriving alien can be denied entry into the United States by an immigration officer because of misrepresentation, use of fraudulent documents, or lack of any documents. The alien may be ordered removed without a hearing before an immigration judge, and without administrative or judicial review. This provision is based upon legislation approved by the Subcommittee on International Law, Immigration, and Refugees during the 103rd Congress.

This provision is necessary because thousands of aliens arrive in the United States at airports each year without valid documents to enter the United States. Unless such aliens claim to be U.S. nationals, or state a fear of persecution, there is no requirement under the Constitution or international treaty to do anything other than return them, as promptly as possible, to where they boarded the plane to come here. Neither international law nor the Due Process Clause of the Fifth Amendment require that such aliens be given a hearing before an immigration judge or a right to appeal.

Section 621 also requires that an alien subject to expedited removal who claims persecution or otherwise indicates a desire to apply for asylum be interviewed by an asylum officer to determine if the alien has a “credible fear” of persecution. A “credible fear” is established if the alien is more likely than not telling the truth, and if there is a reasonable probability that the alien will meet the definition of refugee and otherwise qualify for asylum. This standard, therefore, is lower than the “well-founded fear” standard needed to ultimately be granted asylum in the United States—the arriving alien need only show a probability that he will meet the well-

founded fear standard. The credible fear standard is designed to weed out non-meritorious cases so that only applicants with a likelihood of success will proceed to the regular asylum process. If the alien meets this threshold, the alien is permitted to remain in the U.S. to receive a full adjudication of the asylum claim—the same as any other alien in the United States.

Under this system, there should be no danger that an alien with a genuine asylum claim will be returned to persecution. The initial screening, which should take place in the form of a confidential interview, will focus on two questions: is the alien telling the truth; and does the alien have some characteristic that would qualify the alien as a refugee. As in other cases, the asylum officer should attempt to elicit all facts relevant to the applicant's claim. It is not unreasonable to expect the applicant to be truthful in such an interview. Nor is it unreasonable to expect that, in the case of a person genuinely fleeing persecution, that the interview will yield sufficient facts to determine that the alien has a reasonable likelihood of being successful in the full asylum process.

Section 621 permits the interview itself to be carried out by a full-time INS asylum officer, or by an INS inspector or other official who has received the complete training provided to full-time asylum officers and has reasonable access to country condition reports and other resources that are used by asylum officers to assess the credibility and foundation of asylum claims.

TAGGANTS

H.R. 1710's deterrent approach to fighting terrorism is not limited to immigration reforms and the previously discussed investigative techniques and tools. Deterrence, with respect to the creation of explosives through the use of common agricultural fertilizers and the use of commercially manufactured explosives in criminal activities, is also an important element of this measure. The Committee considered the proposal which would have required the inclusion of tracer element taggants to commercially manufactured explosives, and considered whether it is feasible to make fertilizer products inert without negating their utility.

Section 305 calls for a thorough study of these issues in order to fully understand the consequences of including tracer element taggants in commercially manufactured explosives or mandating the insertion of a particular chemical compound in commonly used fertilizer before a specific course of action is taken. It was determined that Congress ought to be fully informed as to the means and methods available to effectively address these issues. The Committee recognizes the impact any legislation in this area would have on the explosives manufacturing industry, as well as on the sand, glass, silica, and building materials industry. The Committee was careful not to overreact to a problem that might be solved another way, especially in light of today's advancing technology. The purpose of section 305 is to examine whether there are ways to detect the existence of the presence of an explosive before the explosion; to identify and trace explosives and precursor chemicals following a criminal act of bombing; and to determine whether there is a way to make common chemicals available to the public, such as ammonium nitrate (a common fertilizer available to the public),

ineffective for use as an explosive in the commission of a criminal act.

In its contemplation of the issue of taggants, or tracer elements, one thing was made exceedingly clear: the last known study that was conducted on the issue was completed in 1980 by the Office of Technology Assessment (OTA). Certainly, considerable technological advances have been made since 1980, which is all the more reason to further study this issue.

The Committee intends that the required study be thorough, objective, and fair. Assistance in the effort to prevent terrorism in this country is the ultimate goal. Congress must proceed with full knowledge of all of the facts, including the costs and benefits to society, individuals, and the affected industries. Moreover, Congress should have the full range of options available to it before proceeding in this area. It is important that the Attorney General evaluate and report to Congress on at least the following issues:

- (1) law enforcement utility;
- (2) deterrent effect;
- (3) environmental effects;
- (4) feasibility;
- (5) efficacy; and
- (6) economic impact on trade, business, and jobs.

The Attorney General should consult with experts on these and other pertinent issues, including government officials with expertise in explosives manufacturing and uses. The Attorney General should also consult with industry experts to discuss and evaluate the same issues. Additionally, the Attorney General should take heed of the advice and comment of not only the immediately affected explosives industry, but should also consider the effect of requiring tracer element taggants in the manufacturing process of explosives upon the wide array of various industries that would be otherwise affected by such a requirement. Such industries include the glass industry, the silica industry, the sand industry, the building materials industry, and the fertilizer industry, among others.

The Attorney General should consider the establishment of an Advisory Committee, comprised of various government and industry experts. That Committee should assist in framing the issues to be studied and to assure that those with a legitimate interest in the results of the study are heard. The Attorney General shall issue findings and recommendations that are supported by the evidence.

H.R. 1710 also directs the Attorney General through the National Institutes of Justice to study fertilizer and its explosive capabilities. Those studying this question must keep in mind that fertilizer is essential for our nation's agricultural producers to provide abundant food crops. Therefore, it is also essential that all aspects of this beneficial agricultural commodity be considered and carefully evaluated to determine any impact upon agricultural production in the United States by the inclusion of either tracer taggants or other chemicals. To assist the Attorney General in meeting the objectives of the study, any portion of the study relating to fertilizer should be conducted by a non-profit fertilizer research center, such as the International Fertilizer Development Center ("IFDC").

The IFDC is the only non-profit center in the United States dedicated to fertilizer research and development.²² The IFDC is a public, international organization, partially funded through the U.S. Agency for International Development. It is located on U.S. government property in Muscle Shoals, Alabama. The IFDC has no commercial interest in the chemical and fertilizer industry. It is viewed by experts in the field as an unbiased organization.

During the hearings held by the Committee, it was determined that there are a number of complex issues that need to be considered in studying and evaluating effective anti-tampering measures. Issues that need to be addressed include:

- (a) the practical and technical feasibility of measures to prevent the use of fertilizer chemicals in the manufacture of explosive devices;
- (b) the ability to reverse engineer those measures, rendering them ineffective anti-tampering actions;
- (c) the agronomic and economic impact of those measures on America's farmers; and
- (d) the environmental impact of those same measures.

For example, the Committee learned that although any number of materials theoretically can be added to ammonium nitrate fertilizer to make it more difficult to alter the product for explosive purposes, those same materials could substantially alter the agronomic and/or economic benefit of the product to a point where it becomes ineffective for use by America's farmers and gardeners.

Furthermore, the Committee determined that the issues are complex with regard to the agronomic and economic value of fertilizer. Therefore, the committee believes it is necessary to study all of the issues regarding fertilizer such as:

- (1) the history of the use of fertilizer chemicals to manufacture explosives;
- (2) the technical and economic feasibility of measures that might be employed to render fertilizer chemicals used in the manufacture of explosives inert or less explosive;
- (3) the technical, legal, and economic feasibility of imposing controls on the manufacture, distribution, or use of fertilizer chemicals distributed in the United States as a result of international trade; and
- (4) the agronomic, economic and social benefits of the intended use of fertilizer chemicals that also may be used to manufacture explosives.

These and other important questions should be answered through the study mandated by this legislation before the Congress imposes any legal requirements upon the manufacturers of fertilizers and explosives to include tracer element taggants or "inert" materials in their products. It is also necessary that the questions be answered thoroughly and credibly, without concern for the result. Therefore, it is imperative that the study be conducted by a non-profit, public research center that is uniquely qualified and established to provide technical information and guidance to inves-

²²The IFDC was previously associated with the former National Fertilizer Development Center (later renamed the National Fertilizer and Environmental Research Center) of the Tennessee Valley Authority, which was key to the U.S. Government's research and development work on munitions during the Second World War.

tigate the economic, trade, feasibility, safety, and law enforcement utility of adding such items to the production process of either fertilizer or explosives.

MARKING PLASTIC EXPLOSIVES

While the Committee determined that it needs additional information regarding the issue of tagging commercially manufactured explosives and making fertilizer inert, that was not the case with respect to requiring detection materials in plastic explosives. Specifically, Title V, codifies the "Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991." These provisions require the inclusion of specific chemical compounds during the manufacturing process of plastic explosives. The Montreal Convention resulted from the tragic bombing of Pan Am Flight #103 over Lockerbie, Scotland.²³ These provisions will enable airport security to use scanning equipment to determine the presence of plastic explosives at critical points prior to departure of all aircraft and will greatly enhance the safety of airline travellers throughout the world.

AMENDING THE FOREIGN SOVEREIGN IMMUNITIES ACT

Also responding to the tragedy of the Pan Am 103 bombing is section 804, which would amend the Foreign Sovereign Immunities Act (28 U.S.C. §§ 1602, *et seq.*) to permit suits by U.S. nationals against foreign states in U.S. courts. Jurisdiction would be granted to such suits seeking money damages for personal injury or wrongful death caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or providing material support or resources for such acts. The lawsuit must allege that the terrorist act was undertaken by an "official, employee or agent" of a foreign country, or acting on behalf of, or at the insistence of, a foreign country's leadership or hierarchy. It is expected that a lawsuit proceeding under this section will be brought either by the victim, or on behalf of the victim's estate in the case of death or mental incapacity.

The existence of state-sponsored terrorism is well documented and state sponsors of terrorism include Libya, Iraq, Iran, Syria, North Korea, Cuba, and Sudan. These outlaw states consider terrorism a legitimate instrument of achieving their foreign policy goals. They have become better at hiding their material support for their surrogates, which includes the provision of safe havens, funding, training, supplying weaponry, medical assistance, false travel documentation, and the like. For this reason, the Committee has determined that allowing suits in the federal courts against countries responsible for terrorist acts where Americans and/or their loved ones suffer injury or death at the hands of the terrorist states is warranted. Section 804 will give American citizens an important economic and financial weapon against these outlaw states.

²³ In fact, a United States Grand Jury has indicted two men, for allegedly working on behalf of the Libyan government and carrying out the terrorist attack on Pan Am 103, which resulted in the death of everyone on board.

DETERRING THE TERRORIST USE OF NUCLEAR MATERIALS

In addition to the threat posed to our personal security by plastic explosives and state-sponsored terrorism, numerous experts consulted by the Committee expressed grave concerns about the proliferation of nuclear materials across the globe due to the break-up of the former Soviet Union. Because of these fundamental changes in international politics, the ability to control access to, and the dissemination of, such material has also faltered. The Committee realizes we must act to deter any further proliferation of nuclear materials, which can do substantial damage with very little effort.

Title IV addresses this concern by proscribing the possession, transport, or receipt, of any nuclear grade materials without legal authorization. Warheads in transit by rail between military facilities, or to assembly and disassembly facilities, could also be vulnerable to direct attack and theft. Small portable devices, even with severely degraded yields, could still be several times more powerful than the Hiroshima bomb and powerful enough to bring down a target like the World Trade Center. Even with no nuclear yields, such a device could cause significant radiological dispersion, contaminating the area of an attack and threatening survivors and rescue personnel. Without the strict and tight reign of the former Soviet Union, an increasing number of cases of transnational nuclear material smuggling conspiracies have been reported. The Committee has responded to the dangers posed by this increasing trend, and has done so responsibly.

H.R. 1710, the "Comprehensive Antiterrorism Act of 1995," is a responsible and rational response to the terrorist threat. This bill will assist law enforcement in the detection and prevention of possible terrorist attacks in side the United States and abroad. During its deliberations on this legislation, the Judiciary Committee was sensitive to concerns raised with respect to constitutionally protected rights that might be affected by its various provisions. The Committee is confident that it has achieved the proper balance between individual rights and the rights of society as a whole.

This bill is a forward-looking effort on the part of the United States government to protect and defend its people from those who may wish us harm to achieve distorted political and ideological goals. This bill properly responds to the needs of law enforcement. It cuts off funding sources for foreign terrorist organizations. It denies foreign terrorists and criminals entry into the United States. It expels alien terrorists promptly. It severely punishes criminal terrorist acts. It encourages development of technologies to detect explosive devices and materials. It furthers the development of better capabilities and methods of tracking those entering and leaving the United States and their purposes for visiting. It provides law enforcement with constitutional means of identifying, investigating, and ultimately prosecuting terrorists, without damaging the constitutional protections we cherish.

HISTORY OF THE LEGISLATION AND HEARINGS

On February 9, 1995, the President formally submitted a legislative proposal, the "Omnibus Counterterrorism Act of 1995" for consideration by Congress. On February 10, 1995, Representative

Charles E. Schumer of New York, a member of the Judiciary Committee and ranking member of the Subcommittee on Crime, introduced the Administration proposal as H.R. 896.

On April 6, 1995, the full Judiciary Committee held a hearing on issues relating to international terrorism, entitled, "International Terrorism: Threats and Responses." At that hearing, particular sections of H.R. 896 were discussed, criticisms of H.R. 896 were voiced, and witnesses and Members engaged in debate relating to the constitutionality of specific provisions of that bill. The witnesses at that hearing were as follows: Lt. Col. Robin L. Higgins, United States Marine Corps; (widow of tortured and slain United States Marine Corps Colonel, William "Rich" Higgins); Admiral William O. Studeman, Acting Director, Central Intelligence Agency; the Honorable Jamie S. Gorelick, Deputy Attorney General of the United States, U.S. Department of Justice; the Honorable Louis J. Freeh, Director, Federal Bureau of Investigation, U.S. Department of Justice; Ambassador Philip Wilcox, Coordinator of Counterterrorism, U.S. Department of State; Dr. Roy Godson, Professor, Georgetown University; Dr. Michael A. Ledeen, Resident Scholar, The American Enterprise Institute; and Mr. Gregory T. Nojeim, Legislative Counsel, American Civil Liberties Union.

Less than two weeks after the Committee's April 6th hearing, this country experienced the horror of the bombing of the Oklahoma City federal building, which killed 168 persons, including many infants and children who were occupying a federal day care center housed in the building.

On May 3, 1995, the Subcommittee on Crime of the Committee on the Judiciary held a hearing to discuss the specific issues relating to domestic terrorism. The witnesses at that hearing were: the Honorable Jamie S. Gorelick, Deputy Attorney General of the United States, U.S. Department of Justice; the Honorable Louis J. Freeh, Director, Federal Bureau of Investigation, U.S. Department of Justice; the Honorable William P. Barr, former Attorney General of the United States, and currently General Counsel, GTE Corporation; the Honorable William H. Webster, former Director of both the Federal Bureau of Investigation and the Central Intelligence Agency and former U.S. District Court Judge; the Honorable George J. Terwilliger, III, former Deputy Attorney General of the United States; Mr. William M. Baker, former Assistant Director for the Criminal Investigative Division, Federal Bureau of Investigation, U.S. Department of Justice; Professor Brent Smith, Department of Criminal Justice, University of Alabama, Birmingham, Alabama; Mr. Ira Glasser, Executive Director, American Civil Liberties Union; and Mr. Thomas Halpern, Associate Director of Fact Finding, Anti-Defamation League, B'nai B'rith.

On May 15, 1995, Representative Richard A. Gephardt, the Minority Leader of the House of Representatives, introduced H.R. 1635, the "Antiterrorism Amendments Act of 1995", which represented the Clinton Administration's legislative reaction to the Oklahoma City catastrophe.

Concerned about constitutional and scope problems with both H.R. 896 and H.R. 1635, Judiciary Committee Chairman Henry J. Hyde introduced H.R. 1710, the "Comprehensive Antiterrorism Act of 1995," to the House of Representatives on May 25, 1995.

In Chairman Hyde's view, neither H.R. 896 nor H.R. 1635 sufficiently addressed key aspects of the terrorism problem. For example, the Administration's proposal failed to take into full account the problems our own immigration laws present to national security. Its legislative initiative focused primarily on ways to expel foreign nationals engaged in criminal activity, such as terrorism, rather than on how to keep them out of the United States in the first instance. H.R. 1710 makes membership in a designated terrorist organization a grounds for the denial of a visa to enter the United States. H.R. 1710 also takes steps to reform our asylum process, which has been the subject of abuse by terrorists, such as Sheik Omar Abdel Rahman. It denies asylum relief to alien terrorists and establishes an expedited asylum procedure to avoid allowing entry to alien terrorist on the premise of their seeking asylum.

The Administration's legislative proposal also included the establishment of special deportation procedures in which classified information could be used to deport aliens alleged to be terrorists. That proposal treated all aliens the same, without regard to their legal status in the United States. H.R. 1710 corrects this unconstitutional flaw, so as to provide legal permanent resident aliens with additional procedural protections, as opposed to those classes of aliens who are not permanently present within the United States. H.R. 1710 makes this special deportation procedure consistent with the established due process standards under the Constitution.

The Administration's initial proposal also suggested a method of designating "terrorist" organizations. Chairman Hyde considered the process as too broad, in that it could allow for such a designation to occur with respect to purely domestic organizations. H.R. 1710 makes it clear that the designation can only be made of foreign organizations engaged in terrorist activity that threatens the national security interest of the United States. Unlike the Clinton proposal, H.R. 1710 requires notice be given to Congress of the Administration's intent to designate an organization, requires the publication of the designation in the Federal Register, and subjects the designation to judicial review.

H.R. 1710 also reworked the Administration's proposal regarding fundraising activity for designated terrorist organizations. The Administration created a loophole, by which domestic organizations could obtain a license from the Treasury Secretary in order to raise money, or solicit contributions for, a designated terrorist organization. H.R. 1710 prohibits all material support that is knowingly given to the designated foreign terrorist organization.

Finally, Chairman Hyde was also disturbed by the proposal to require the inclusion of tracer taggants in commercially manufactured explosives without adequate scientific or law enforcement justification.²⁴

On June 12 and 13, 1995, the full Judiciary Committee held hearings specifically focusing on the Chairman's bill. The Committee heard testimony on H.R. 1710 from the following witnesses:

²⁴It was noted that the last systematic analysis of the technology relating to this particular issue was conducted by the Office of Technology Assessment more than 15 years ago. Moreover, the Chairman desired to ascertain the impact such a requirement would have on the various industries affected by such a law, including the explosives, glass, sand, salt, building materials, and silica industries.

Representative Doug Bereuter of Nebraska; Representative David Skaggs of Colorado; the Honorable Jamie S. Gorelick, Deputy Attorney General of the United States, U.S. Department of Justice; the Honorable William P. Barr, former Attorney General of the United States, and currently General Counsel for the GTE Corporation; the Honorable Abraham Sofaer, former Legal Counsel, U.S. Department of State, former U.S. District Court Judge, and current Senior Fellow with the Hoover Institute at Stanford University; Associate Professor James P. Fleissner, Mercer University School of Law in Macon, Georgia and former Chief of the General Crimes Section, Criminal Division, U.S. Attorney's Office for the Northern District of Illinois; the Honorable Bruce Fein, former Associate Deputy Attorney General of the United States; Mr. Gregory T. Nojeim, Legislative Counsel, the American Civil Liberties Union; Mr. Russell Seitz, Associate with the Olin Institute for Strategic Studies at Harvard University; Mr. E. John Hay, U.S. Bureau of Mines; Mr. J. Christopher Ronay, President, Institute of Makers of Explosives and former Chief, FBI Explosives Lab; Mr. Bob Delfay, Executive Director, Sporting Arms and Ammunition Manufacturers Institute; Mr. Khahil E. Jahshan, Executive Director, National Association of Arab Americans; Dr. Aziza Al-Hibri, Esq., Professor of Law at the University of Richmond on behalf of the American Muslim Council; Ms. Ruth Lansner, Chair of the National Legal Affairs Committee for the Anti-Defamation League of B'nai B'rith; and the Honorable John H. Shenefield, former Associate Attorney General of the United States, and currently the Chairman of the American Bar Association's Standing Committee on Law and National Security and a partner at Morgan, Lewis & Bockius, Washington, D.C.

This full Committee hearing brought the total number of days of hearings on terrorism-related topics in the past two Congresses to six.²⁵

On Wednesday, June 14, 1995, the Committee began what would be four days of mark-up on H.R. 1710. On Tuesday, June 20, 1995, the full Committee on the Judiciary voted 23 to 12 to report favorably the "Comprehensive Antiterrorism Act of 1995" to the House of Representatives, as amended.

COMMITTEE CONSIDERATION

On June 14, 15, 16, and 20, 1995, the full Committee on the Judiciary met in open session for purposes of consideration and amendment of H.R. 1710. On June 20, 1995, the Judiciary Committee ordered the bill H.R. 1710 favorably reported, with amendments, by a recorded vote of 23 to 12, a quorum being present.

²⁵In the 103d Congress, the Subcommittee on Crime and Criminal Justice held a hearing styled, "World Trade Center Bombing: Terror Hits Home," on March 9, 1993. That hearing was held just one week following the noontime bombing at the World Trade Center, which killed 6 people and injured scores of others. At that hearing, testimony was received from a number of witnesses, including: Ambassador Thomas E. McNamara, Coordinator for Counterterrorism, U.S. Department of State; and William S. Sessions, Director, Federal Bureau of Investigation, U.S. Department of Justice.

On February 23, 1994, the Subcommittee on International Law, Immigration, and Refugees, held a hearing relating to Criminal Aliens. During that hearing fourteen various legislative proposals were addressed and debated. Among the bills discussed was H.R. 3860 introduced by Representative Lamar S. Smith of Texas (now Chairman of the Subcommittee on Immigration and Claims). Now Chairman Henry J. Hyde was among the witnesses who testified at that hearing.

VOTE OF THE COMMITTEE

The following roll calls took place during Committee deliberations on H.R. 1710. The roll calls are grouped by date.

JUNE 14, 1995

1. An amendment by Mr. McCollum to authorize appropriations of \$5,000,000 for the Attorney General to award grants, in consultation with FEMA, for training of local fire and emergency service departments to respond to terrorist incidents.

The McCollum amendment was adopted by a roll call vote of 20–10.

Mr. Nadler and Mr. Becerra stated for the record that, had they been present, they would have voted “aye” on the McCollum amendment.

AYES

Mr. Hyde
Mr. Moorhead
Mr. McCollum
Mr. Gallegly
Mr. Bono
Mr. Bryant of Tennessee
Mr. Flanagan
Mr. Conyers
Mrs. Schroeder
Mr. Frank
Mr. Schumer
Mr. Berman
Mr. Boucher
Mr. Bryant of Texas
Mr. Reed
Mr. Scott
Mr. Watt
Mr. Serrano
Ms. Lofgren
Ms. Jackson Lee

NAYS

Mr. Sensenbrenner
Mr. Gekas
Mr. Coble
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Heineman
Mr. Chabot
Mr. Barr

2. An amendment by Mr. Schumer to authorize the Secretary of the Treasury to promulgate regulations prohibiting the manufacture of explosive materials without tracer element taggants.

The Schumer amendment was defeated by a roll call vote of 11–19.

AYES

Mr. Conyers
Mrs. Schroeder
Mr. Frank
Mr. Schumer
Mr. Berman
Mr. Bryant of Texas
Mr. Reed
Mr. Nadler
Mr. Becerra
Ms. Lofgren
Ms. Jackson Lee

NAYS

Mr. Hyde
Mr. Moorhead
Mr. Sensenbrenner
Mr. Coble
Mr. Schiff
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Bono

Mr. Heineman
 Mr. Bryant of Tennessee
 Mr. Chabot
 Mr. Flanagan
 Mr. Barr
 Mr. Boucher
 Mr. Scott
 Mr. Watt

3. An amendment by Ms. Lofgren to strike section 623 from the bill, which would subject illegal aliens to exclusion proceedings rather than deportation proceedings.

The Lofgren amendment was defeated by a roll call vote of 9–23.

AYES

Mr. Conyers
 Mrs. Schroeder
 Mr. Berman
 Mr. Nadler
 Mr. Scott
 Mr. Watt
 Mr. Becerra
 Ms. Lofgren
 Ms. Jackson Lee

NAYS

Mr. Hyde
 Mr. Moorhead
 Mr. Sensenbrenner
 Mr. McCollum
 Mr. Coble
 Mr. Smith of Texas
 Mr. Schiff
 Mr. Gallegly
 Mr. Canady
 Mr. Goodlatte
 Mr. Buyer
 Mr. Hoke
 Mr. Bono
 Mr. Heineman
 Mr. Bryant of Tennessee
 Mr. Chabot
 Mr. Flanagan
 Mr. Barr
 Mr. Frank
 Mr. Schumer
 Mr. Boucher
 Mr. Bryant of Texas
 Mr. Reed

4. An amendment by Mr. Schumer to authorize the Attorney General together with the National Institute of Justice to identify which bullets are able to pierce police body armor, and to grant the Attorney General the authority to outlaw such bullets by regulation.

The Schumer amendment was adopted by a roll call vote of 16–14.

AYES

Mr. Conyers
 Mrs. Schroeder
 Mr. Schumer
 Mr. Berman
 Mr. Bryant of Texas
 Mr. Reed
 Mr. Nadler
 Mr. Scott

NAYS

Mr. Hyde
 Mr. Moorhead
 Mr. Sensenbrenner
 Mr. McCollum
 Mr. Gekas
 Mr. Smith of Texas
 Mr. Gallegly
 Mr. Inglis

Mr. Watt	Mr. Goodlatte
Mr. Becerra	Mr. Buyer
Mr. Serrano	Mr. Hoke
Ms. Lofgren	Mr. Bono
Ms. Jackson Lee	Mr. Bryant of Tennessee
Mr. Heineman	Mr. Barr
Mr. Chabot	
Mr. Flanagan	

5. An amendment by Ms. Jackson Lee to sunset five years after the date of enactment all of Title VI of the bill subject to an extension by Congress.

The Jackson Lee amendment was defeated by a 15–15 roll call vote.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Berman	Mr. Sensenbrenner
Mr. Bryant of Texas	Mr. McCollum
Mr. Reed	Mr. Coble
Mr. Nadler	Mr. Smith of Texas
Mr. Scott	Mr. Gallegly
Mr. Watt	Mr. Canady
Mr. Becerra	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
Mr. Inglis	Mr. Bryant of Tennessee
Mr. Heineman	Mr. Chabot
Mr. Barr	Mr. Flanagan

6. An amendment by Mr. Nadler to strike from the provisions relating to the special deportation proceedings for certain alien terrorists that provision which authorizes continuation of the proceedings if a declassified summary of evidence cannot be provided to the alien and also those provisions establishing a special panel of attorneys to challenge classified evidence on behalf of certain alien terrorists.

The Nadler amendment was defeated by a roll call vote of 12–18.

Mr. Berman and Ms. Jackson Lee stated for the record that, had they been present, they would have voted “aye” on the Nadler amendment.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Boucher	Mr. Coble
Mr. Bryant of Texas	Mr. Smith of Texas
Mr. Reed	Mr. Schiff
Mr. Nadler	Mr. Gallegly
Mr. Scott	Mr. Canady
Mr. Watt	Mr. Inglis
Mr. Becerra	Mr. Goodlatte

Mr. Serrano
Ms. Lofgren

Mr. Buyer
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mr. Schumer

7. An en bloc amendment by Mr. Becerra to strike sections 621 and 622 of the bill establishing expedited asylum and exclusion procedures and standards.

The Becerra en bloc amendment was defeated by a roll call vote of 5–24.

Ms. Jackson Lee stated for the record that, had she been present, she would have voted “aye” on the Becerra en bloc amendment.

AYES

Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano

NAYS

Mr. Hyde
Mr. Moorhead
Mr. Sensenbrenner
Mr. Gekas
Mr. Coble
Mr. Smith of Texas
Mr. Schiff
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mrs. Schroeder
Mr. Frank
Mr. Boucher
Mr. Bryant of Texas
Mr. Reed
Ms. Lofgren

JUNE 15, 1995

8. An amendment by Mr. Scott to strike section 306 of the bill, which permits an exception to the statutory exclusionary rule for wiretap evidence, and to replace it with language derived from the Supreme Court decision of *United States v. Leon*, 468 U.S. 897 (1984).

The Scott amendment was defeated by a roll call vote of 13–21.

AYES

Mr. Conyers
Mrs. Schroeder
Mr. Schumer

NAYS

Mr. Hyde
Mr. Moorhead
Mr. Sensenbrenner

Mr. Berman	Mr. McCollum
Mr. Boucher	Mr. Gekas
Mr. Reed	Mr. Coble
Mr. Nadler	Mr. Smith of Texas
Mr. Scott	Mr. Schiff
Mr. Watt	Mr. Gallegly
Mr. Becerra	Mr. Canady
Mr. Serrano	Mr. Inglis
Ms. Lofgren	Mr. Goodlatte
Ms. Jackson Lee	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Frank

9. A motion by Mr. Flanagan to reconsider the Schumer amendment relating to “cop killer” bullets. See roll call vote summary number 4, above. The motion to reconsider the Schumer amendment was approved by a roll call vote of 21–14.

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Schumer
Mr. Gekas	Mr. Berman
Mr. Coble	Mr. Bryant of Texas
Mr. Smith of Texas	Mr. Reed
Mr. Schiff	Mr. Nadler
Mr. Gallegly	Mr. Scott
Mr. Canady	Mr. Watt
Mr. Inglis	Mr. Becerra
Mr. Goodlatte	Mr. Serrano
Mr. Buyer	Ms. Lofgren
Mr. Hoke	Ms. Jackson Lee
Mr. Bono	
Mr. Heineman	
Mr. Bryant of Tennessee	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Boucher	

Upon approval of the Flanagan motion, the Schumer amendment relating to “cop killer” bullets was the business again before the Committee.

10. An amendment by Mr. Heineman to amend the Schumer amendment and replace it with a 6-month study by the National Institute of Justice (NIJ) to determine the methodology for identifying handgun ammunition that is capable of penetrating body-armor.

The Heineman amendment to the Schumer amendment was adopted by a roll call vote of 20–13.

AYES

Mr. Hyde
Mr. Moorhead
Mr. Sensenbrenner
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Smith of Texas
Mr. Schiff
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Flanagan
Mr. Barr
Mr. Boucher

NAYS

Mr. Conyers
Mrs. Schroeder
Mr. Schumer
Mr. Berman
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Ms. Lofgren
Ms. Jackson Lee
Mr. Chabot

11. The Schumer amendment as amended by the Heineman amendment was brought to a vote. It was adopted by a roll call vote of 22–12.

AYES

Mr. Hyde
Mr. Moorhead
Mr. Sensenbrenner
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Smith of Texas
Mr. Schiff
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mr. Boucher
Mr. Watt

NAYS

Mr. Conyers
Mrs. Schroeder
Mr. Schumer
Mr. Berman
Mr. Bryant of Texas
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Becerra
Mr. Serrano
Ms. Lofgren
Ms. Jackson Lee

JUNE 16, 1995

12. An amendment by Mr. Frank to allow the use of "special attorneys" cleared to receive classified information in the special deportation proceedings for any "lawfully admitted" alien rather than simply for "lawful permanent" resident aliens.

The Frank amendment was defeated by a roll call vote of 13-18.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Boucher	Mr. Gekas
Mr. Bryant of Texas	Mr. Coble
Mr. Reed	Mr. Smith of Texas
Mr. Scott	Mr. Schiff
Mr. Watt	Mr. Canady
Mr. Becerra	Mr. Inglis
Ms. Lofgren	Mr. Goodlatte
Ms. Jackson Lee	Mr. Buyer
Mr. Flanagan	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Barr

JUNE 20, 1995

13. An amendment by Ms. Lofgren to strike sections 303 and 304 (the Bereuter Initiative) of the bill relating to FBI access to certain consumer credit agency records and records of common carriers, hotels, motels, and vehicle rental companies, upon presentation of a National Security Letter from the FBI Director certifying that the information sought was necessary to an on-going foreign counterintelligence investigation and replacing those sections with language requiring a court order authorizing access to such records.

The Lofgren amendment was adopted by a roll call vote of 16-15.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. Coble
Mr. Berman	Mr. Smith of Texas
Mr. Boucher	Mr. Gallegly
Mr. Bryant of Texas	Mr. Canady
Mr. Reed	Mr. Inglis
Mr. Scott	Mr. Goodlatte
Mr. Watt	Mr. Buyer
Mr. Becerra	Mr. Hoke
Mr. Serrano	Mr. Bono
Ms. Lofgren	Mr. Heineman
Ms. Jackson Lee	Mr. Bryant of Tennessee

Mr. Chabot
Mr. Flanagan

Mr. Barr

14. An amendment by Ms. Lofgren to limit, within the definition of “material support” found in section 103 of the bill, the scope of the term “other physical assets” to not include “medicine or religious materials.”

The Lofgren amendment was adopted by a roll call vote of 16–15.

AYES

Mr. Conyers
Mrs. Schroeder
Mr. Frank
Mr. Schumer
Mr. Berman
Mr. Boucher
Mr. Bryant of Texas
Mr. Reed
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Ms. Lofgren
Ms. Jackson Lee
Mr. Hyde
Mr. Hoke

NAYS

Mr. Moorhead
Mr. Sensenbrenner
Mr. Coble
Mr. Smith of Texas
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr

15. An amendment by Ms. Jackson Lee to sunset six years after the date of enactment all of Title VI of the bill subject to an extension by Congress.

The Jackson Lee amendment was defeated by a roll call vote of 17–17.

AYES

Mr. Conyers
Mrs. Schroeder
Mr. Frank
Mr. Schumer
Mr. Berman
Mr. Boucher
Mr. Bryant of Texas
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Ms. Lofgren
Ms. Jackson Lee
Mr. Hoke
Mr. Heineman

NAYS

Mr. Hyde
Mr. Moorhead
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Smith of Texas
Mr. Schiff
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Bono
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr

16. An amendment by Mr. Nadler to mandate that the alien terrorists involved in the special deportation proceedings be given a summary that gives the alien “substantially the same ability to

make his defense” as would providing the alien with the classified information.

The Nadler amendment was defeated by a roll call vote of 9–19.

Ms. Lofgren and Ms. Jackson Lee stated for the record that, had they been present, they would have voted “aye” on the Nadler amendment.

AYES

Mr. Conyers
Mrs. Schroeder
Mr. Berman
Mr. Boucher
Mr. Bryant of Texas
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra

NAYS

Mr. Hyde
Mr. Moorhead
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Smith of Texas
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mr. Schumer

17. An amendment by Mr. Bryant of Texas, to grant additional standing beyond members of a foreign terrorist groups to challenge the Secretary of State’s designation of the foreign organization as a “terrorist organization.”.

The Bryant of Texas amendment was defeated by a roll call vote of 10–16.

Mrs. Schroeder and Mr. Boucher stated for the record that, had they been present, they would have voted “aye” on the Bryant of Texas amendment.

AYES

Mr. Conyers
Mr. Schumer
Mr. Berman
Mr. Bryant of Texas
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Ms. Lofgren
Ms. Jackson Lee

NAYS

Mr. Hyde
Mr. Moorhead
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Gallegly
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr

18. The Chairman moved to favorably report H.R. 1710, as amended, to the House. The motion was agreed to by a roll call vote of 23–12.

AYES

Mr. Hyde
Mr. Moorhead
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Smith of Texas
Mr. Schiff
Mr. Gallegly
Mr. Canady
Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Flanagan
Mr. Frank
Mr. Schumer
Mr. Berman
Mr. Boucher
Mr. Reed
Ms. Lofgren
Ms. Jackson Lee

NAYS

Mr. Conyers
Mrs. Schroeder
Mr. Bryant of Texas
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Mr. Sensenbrenner
Mr. Inglis
Mr. Chabot
Mr. Barr

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is [in]applicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1710, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1710, the Comprehensive Antiterrorism Act of 1995, as ordered reported by the House Committee on the Judiciary on June 20, 1995. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1710.
2. Bill title: Comprehensive Antiterrorism Act of 1995.
3. Bill status: As ordered reported by the House Committee on the Judiciary on June 20, 1995.
4. Bill purpose: H.R. 1710 would make many changes and additions to federal laws relating to terrorism. Provisions having a potentially significant budgetary impact include the following:

Titles I and II would provide for new and increased penalties for a number of crimes related to terrorism;

Title VI would authorize appropriations of \$5 million annually, beginning in fiscal year 1996, for the Immigration and Naturalization Service (INS) for the detention and deportation of alien terrorists;

Title VI would provide for criminal forfeiture of property in passport and visa fraud cases;

Title VII would authorize appropriations of such sums as are necessary for the Federal Bureau of Investigation (FBI) for the following activities: (1) Hiring additional personnel and procuring equipment to support expanded investigations of domestic and international terrorism activities, (2) establishing a Domestic Counterterrorism Center, and (3) providing law enforcement coverage of public events offering the potential for international terrorism;

Title VII also would authorize appropriations of: (1) \$5 million for fiscal year 1996 for the Attorney General to make grants to metropolitan areas for fire and emergency services antiterrorist training, (2) \$10 million annually for the Attorney General to assist foreign countries in procuring antiterrorism technology, and (3) \$10 million for the National Institute of Justice for research and development to support counterterrorism technologies;

Title VII would authorize new fees for fiscal years 1996 and 1997 for the Department of State for border security programs; and

Title VII would impose a 40 percent surcharge on civil monetary penalties during the fiscal years 1996 through 1998.

5. Estimated cost to the Federal Government: Assuming appropriation of the entire amounts authorized for discretionary programs, enacting H.R. 1710 would increase federal spending over fiscal years 1996 through 2000 by an average of about \$160 million per year. Several provisions of H.R. 1710 also would result in changes to mandatory spending and federal revenues. The budgetary effects of the legislation are summarized in Table 1.

TABLE 1.—SUMMARY OF COSTS
[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS ACTION					
Authorizations:					
Estimated authorization level	186	227	195	115	115
Estimated outlays	145	219	202	123	115
MANDATORY SPENDING AND RECEIPTS					
Direct spending:					
Estimated budget authority	-56	-112	-112	(¹)	(¹)
Estimated outlays	-68	-118	-101	3	1
Estimated revenues	(¹)	(¹)	(¹)	(¹)	(¹)

¹ Less than \$500,000.

The costs of this bill fall within budget functions 750 and 150.

6. Basis of estimate: For purposes of this estimate, CBO assumes that H.R. 1710 will be enacted by October 1, 1995.

Authorizations of Appropriations. The following estimates assume that all amounts authorized by the bill would be appropriated for each fiscal year, and that outlays occur at historical rates for these or similar activities. The provisions in this bill that affect discretionary spending are new and would increase costs to the federal government by the amounts shown in the above table, assuming appropriations of the necessary funds. In 1995, appropriations for the Department of Justice total about \$12 billion, of which about \$2 billion is for the FBI.

Title VII of H.R. 1710 would establish in the United States Treasury the Department of Justice Telecommunications Carrier Compliance Fund (DOJTCCF). Collections of the 40 percent surcharge on civil penalties will be available for spending from the fund, subject to appropriations action. Based on CBO projections of the fund's collections and the bill's limits on annual appropriations, we estimate that outlays from the new fund would be \$50 million in 1996, \$106 million in 1997, \$84 million in 1998, and \$8 million in 1999.

Based on information from the FBI, we estimate that the agency would incur additional costs of about \$100 million annually to carry out the bill's provisions. Most of these funds would cover the costs to hire personnel (roughly 800 positions) and to procure equipment. Other authorization amounts are specified in the bill. Table 2 details the bill's estimated budgetary effects that are subject to appropriations action.

TABLE 2.—SPENDING SUBJECT TO APPROPRIATIONS

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
Authorization level:					
DOJTCCF	56	112	80	0	0
FBI	100	100	100	100	100
INS	5	5	5	5	5
Grants for antiterrorist tracking	5	0	0	0	0
Assistance to foreign countries	10	10	10	10	10
National Institute of Justice	10	0	0	0	0
Total	186	227	195	115	115
Estimated outlays	145	219	202	123	115

Note.—All authorization levels are specified in the bill, except the estimated authorization for the FBI and the DOJTCCF.

Receipts and Direct Spending. The imposition of new and enhanced criminal fines in H.R. 1710 could cause government receipts to increase, but we estimate that any such increase would be less than \$500,000 annually. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

The new forfeiture provision in title VI could lead to more assets seized and forfeited to the United States, but we estimate that any such increase would be less than \$500,000 annually in value. Proceeds from the sale of any such assets would be deposited as revenues into the assets forfeiture fund of the Department of Justice and spent out of that fund in the same year. Thus, direct spending from the fund would match any increase in revenues.

H.R. 1710 would authorize the Secretary of State to collect up to \$250 million in fees in 1996 and 1997 for machine readable visas and to spend the funds on a border security program. (The current authority to collect such fees expires at the end of 1995.) Fees collected in excess of that amount would be deposited in the Treasury as miscellaneous receipts, but collections are likely to be much less than that threshold. The Office of Management of Budget estimates that the Department will collect \$80 million in 1996 and \$92 million in 1997. CBO estimates that outlays will lag collections by \$12 million in fiscal 1996 and \$6 million in fiscal year 1997.

Collections of the 40 percent surcharge on civil penalties would be deposited into the DOJTCCF as offsetting receipts and would be available for spending during the same year. CBO estimates that the surcharge amounts collected would be \$56 million in fiscal year 1996 and \$112 million in each of fiscal years 1997 and 1998.

TABLE 3.—RECEIPTS AND DIRECT SPENDING

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
REVENUES					
New Criminal Fees and Forfeiture	(¹)	(¹)	(¹)	(¹)	(¹)
OFFSETTING RECEIPTS					
Department of State Fees:					
Estimated budget authority	—80	—92	0	0	0
Estimated outlays	—80	—92	0	0	0

TABLE 3.—RECEIPTS AND DIRECT SPENDING—Continued
[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
Surcharge in Civil Penalties:					
Estimated budget authority	— 56	— 112	— 112	0	0
Estimated outlays	— 56	— 112	— 112	0	0
Total:					
Estimated budget authority	— 136	— 204	— 112	0	0
Estimated outlays	— 136	— 204	— 112	0	0
DIRECT SPENDING					
Department of State Fees:					
Estimated budget authority	80	92	0	0	0
Estimated outlays	68	86	11	3	1
New Criminal Fees and Forfeiture:					
Estimated budget authority	(¹)	(¹)	(¹)	(¹)	(¹)
Estimated outlays	(¹)	(¹)	(¹)	(¹)	(¹)
Total Direct Spending:					
Estimated budget authority	80	92	(¹)	(¹)	(¹)
Estimated outlays	68	86	11	3	1

¹ Less than \$500,000.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Because several sections of this bill would affect receipts and direct spending, pay-as-you-go procedures would apply. These effects are summarized in the following table.

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998
Change in outlays	0	— 68	— 118	— 101
Change in receipts	0	0	0	0

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Mark Grabowicz, Joseph Whitehill, and Melissa Sampson.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1710 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

This section states that title I may be cited as the “Comprehensive Antiterrorism Act of 1995.”

Sec. 2. Table of contents

TITLE I—NEW OFFENSES

Sec. 101. Protection of Federal employees

Subsection (a) amends Section 1114 of title 18, United States Code, to allow federal prosecution for the murder or attempted murder of all officers and employees of the United States government while that person was engaged in or because of that person's official duties. It also covers the murder or attempted murder of any other person assisting the United States officer, or employee, in the performance of his or her duties, or on account of the assistance provided. The penalties for this offense are the same as those provided under sections 1111, 1112, and 1113 of title 18, United States Code, as indicated. This includes the death penalty. It is expected that this section will not expand federal jurisdiction beyond its traditional role.

Subsection (b) amends Section 115(a)(2) of title 18, United States Code, by including within that statute's reach threats "to assault, kidnap, or murder, any person who formerly served" as a federal law enforcement officer or agent in retaliation for the exercise of his official duties. The statute currently provides this protection to currently employed federal law enforcement officers, and the family members of former law enforcement personnel. Curiously, former federal law enforcement officers are left out of the statute's coverage. This subsection of the bill corrects that omission.

Sec. 102. Prohibiting material support to terrorist organizations

This section outlaws the knowing provision of material support to a foreign organization, that a person knows or should have known is a terrorist organization designated as such under section 212(a)(3)(B)(iv) of the Immigration and Nationality Act. See section 611 of this bill. Imprisonment of up to ten years and a fine is the penalty for a violation of this section.

This section recognizes the fungibility of financial resources and other types of material support. Allowing an individual to supply funds, goods, or services to an organization, or to any of its subgroups that draw significant funding from the main organization's treasury, helps defray the cost to the terrorist organization of running the ostensibly legitimate activities. This in turn frees an equal sum that can then be spent on terrorist activities.

It is anticipated that the Secretary of State will be as exhaustive in his or her designation of terrorist groups for purposes of this section. The Committee, however, also recognizes the impracticability of designating each and every subgroup or group responsible for terrorist activities.

This section allows sufficient flexibility to address the main terrorist organizations and their component parts that receive a substantial amount of their funding from the primary organization. Moreover, the Secretary of State will have to, in his or her report to the Judiciary Committees of the House and Senate, be required to explain and limit the reach of any designation that might be made. This will all be part of the administrative record, should a judicial challenge to the designation be undertaken.

Sec. 103. Modification of material support provision

This provision amends section 2339A of title 18, United States Code, by adding sections 956 and 2332b to the list of offenses for which an individual can be prosecuted for providing material support. It is important to note that the material support being provided, which triggers this section, need not be to a designated terrorist organization. The support must be given in furtherance of the specifically listed criminal offenses, however. So, if one provides lodging to airplane saboteurs, in furtherance of their escape, that act of lodging would be the basis for a criminal prosecution under this section.

This section also deletes current subsection (c)(1) of section 2339A of title 18, United States Code, which provided an unworkable prohibition on these types of criminal investigations. Currently, 2339A (c)(1) precludes investigation or prosecution unless the Attorney General certifies prior to the initiation of the investigation that there was evidence of one's intent to violate federal law. The law now only allows the FBI to investigate, if the facts available to the FBI prior to beginning its inquiry, indicate that the individual to be investigated knowingly or intentionally engaged in a violation of federal law.

This has been unworkable because the intent of the criminal actor can typically only be proven through circumstantial evidence, or other methods of indirect proof, typically developed only after extensive investigation. See *David, Blackmar, Wolff, and O'Malley*, Federal Jury Instructions, § 17.07 (1992). Thus, subsection (c)(1) effectively negated the efficacy of 2339A.

Subsection (c)(2) which further limits investigative and prosecutive authority of the government for criminal activities that could also be arguably protected by the First Amendment of the Constitution, would be deleted by this section. As former Attorney General William P. Barr succinctly stated at the June 12th hearing on this bill, Article III judges are the appropriate arbiters of Constitutional norms. This is not to say, that law enforcement agents and the Attorney General are free to act without regard to their constitutional obligations. On the contrary, the Attorney General is clearly qualified to determine the constitutional boundaries of lawful government actions.

This section also defines the term "material support or resources" to mean "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." "Medicine" should be understood to be limited to the medicine itself, and does not include the vast array of medical supplies. "Religious materials" should not be read to include anything that could be used to cause physical injury to any person. It is meant to be limited to those religious articles typically used during rituals or teachings of a particular faith, denomination, or sect.

Sec. 104. Acts of terrorism transcending national boundaries

Subsection (a) would create a new federal criminal statute: title 18, United States Code, Section 2332b.

Subsection (a)(1)(A) of new Section 2332b of title 18, United States Code, will prohibit the killing, kidnapping, maiming, and the commission of an assault either with a deadly weapon or resulting in serious bodily injury, to anyone within the United States so long as one of six federal jurisdictional bases set out in subsection (b) are met. Furthermore, the crime must be committed “in a manner transcending national boundaries.” The phrase “in a manner transcending national boundaries” is defined in subsection (b) as meaning: “conduct occurring outside the United States in addition to the conduct occurring in the United States.” This provision is viewed as a substantial limitation on the reach of this section. This limitation ensures that only those terrorist crimes that are truly trans-national in scope will be prosecuted under this section. This definition, together with the Attorney General certification requirement, at subsection (d) of 2332b, removes from federal jurisdiction those crimes that ordinarily would be prosecuted in state court.

Subsection (a)(1)(B) of Section 2332b will outlaw damage to real or personal property within the United States, so long as the crime created a substantial risk of serious bodily injury to any other person, the federal jurisdictional elements are proved, and the crime involved conduct transcending national boundaries. Given the other stringent limitations on federal prosecution under this section, it is not necessary to further limit the scope of this section by adding a threshold dollar amount for the property damage before federal law enforcement agencies can investigate.

Subsection (a)(2) of Section 2332b provides for criminal prosecution for any threats, attempts, or conspiracies to commit this offense.

Subsection (b) of Section 2332b supplies the federal jurisdictional elements that the government will be required to prove beyond a reasonable doubt at trial. There are six jurisdictional elements, only one of which needs to be proved at trial. As is typical in criminal cases, the government will not be required to prove that the defendant in a criminal prosecution had knowledge of the jurisdictional basis in order to obtain a conviction. The jurisdictional elements are derived from traditional federal jurisdictional bases currently found in the criminal laws of the United States.

Subsection (c) of Section 2332b establishes the penalties for this new criminal offense. The penalties range from the death penalty, if death results to a victim, to not more than 10 years imprisonment for threatening to commit an offense under this section. Subsection (c)(2) makes this offense non-probationary and directs the sentencing judge to impose the penalties consecutively to any other penalties that might be imposed upon a defendant.

As noted above, subsection (d) of Section 2332b further limits the reach of federal authority under this section by requiring the Attorney General, or highest ranking subordinate with responsibility for criminal prosecutions, to make a written certification that the offense to be prosecuted, any preparatory act, or any act meant to conceal its commission, is “terrorism” as that term is defined in §2331 of title 18, United States Code. This certification must be made before the government files charges against a defendant for a violation of this section. Of course, any preliminary investigation,

including grand jury work, can progress prior to the Attorney General's certification.

Subsection (c) of Section 104 of the bill amends title 18, United States Code, Section 3286, which is the statute of limitations for certain terrorism offenses. Subsection (c) extends the statute of limitations from five to eight years. This extension is necessary given the type of crimes being investigated, and the typically trans-national nature of the offenses which oftentimes requires the coordination of foreign governments. The necessity of this coordination can result in substantial delay for an investigation.

First, subsection (c)(1) limits the reach of Section 3286 to non-capital terrorism offenses listed within the section. Additionally, this section corrects current law which limits to an eight-year period within which the government must file criminal charges. This is not consistent with traditional criminal jurisprudence on capital offenses that allows prosecution for any capital offense without any time limitation.

Subsection (c)(5) would include new section 2332b in the lengthened statute of limitations section to provide for an eight-year statute of limitations for the newly created criminal offense.

Subsection (d) amends current law regarding procedures relating to pre-trial detention hearings under Section 3142 of title 18, United States Code. Currently, a rebuttable presumption exists in favor of detention for criminal defendants that are charged with commission of "crimes of violence" and certain drug trafficking offenses. Subsection (d) would add sections 956(a) and newly created 2332b to the list of charges for which the presumption would also apply. The amendment to Section 3142(e) would do nothing to alter the procedures of the detention hearings. As always, the defendant could rebut the presumption by producing evidence refuting the statutory presumption.

Sec. 105. Conspiracy to harm people and property overseas

This section amends Section 956 of title 18, United States Code, which currently only prohibits conspiracies within the United States to injure property overseas.

This amendment will criminalize conspiracies to harm people and property outside the United States, so long as at least one was present, and one act in furtherance of the conspiracy occurred, within the jurisdiction of the United States.

The penalties for offenses under section 956 will range from life imprisonment for conspiracies to murder or kidnap; 35 years for conspiracy to maim; and 25 years for conspiring to damage property.

Sec. 106. Clarification and extension of criminal jurisdiction over certain terrorism offenses overseas

This section seeks to clarify United States jurisdiction for specific terrorism crimes occurring overseas. For instance, the Aircraft Piracy statute is amended by this bill to provide extraterritorial federal jurisdiction for aircraft piracy if a U.S. national was on the plane; if the perpetrator is a U.S. national; or if the offender is found in the U.S. after committing the crime. The United States has a legitimate interest in punishing anyone who injures a U.S.

national, and also retains an interest in punishing its own citizens for crimes committed against foreign nations, or foreign nationals.

In the remaining subsections of section 103, the U.S. establishes its extraterritorial jurisdiction over terrorism offenses occurring outside the U.S., so long as the victim is an “internationally protected person” (as defined by Section 1116(b)(4) of title 18); if the victim is a representative, officer, employee, or agent of the United States; if the offender is a U.S. national; or if the offender is later found in the U.S.

Sec. 107. Expansion and modification of weapons of mass destruction statute

This section amends Section 2332a of title 18, United States Code. It provides for criminal prosecution for threats of use of weapons of mass destruction. It also inserts an interstate or foreign commerce jurisdictional element.

New Subsection (b) of Section 2332a will authorize a penalty of death for the use, attempted use, threatened use, or conspiracy to use, such a weapon by a U.S. national outside the United States that results in the death to any other person beside the offender.

Sec. 108. Addition of offenses to the money laundering statute

This section makes 20 terrorism offenses “unlawful activities” for the purposes of the money laundering statutes found at §§1956, 1957 of title 18, U.S. Code.

Sec. 109. Expansion of Federal jurisdiction over bomb threats

This section amends section 844(e) of title 18, United States Code. Currently, Section 844(e) prohibits threats of violence against persons or property, whether true or false, if the threat is made through the mail or any other instrument of commerce. This new section replaces “commerce” with the words “interstate or foreign commerce.” It also expands the statute’s reach to any threat that is “in or affects interstate or foreign commerce.”

Sec. 110. Clarification of maritime violence jurisdiction

This section provides clarifying language to Section 2280(b)(1)(A) of title 18, United States Code, which establishes federal jurisdiction over violent activities occurring on the high seas.

Sec. 111. Possession of stolen explosives prohibited

This section amends current Section 842(h) of title 18, United States Code, to include the possession of and pledging, or acceptance as security for a loan, any stolen explosive materials that have moved in, or constitute any part of interstate or foreign commerce. Currently, the law only prohibits the transport, shipment, concealment, storage, bartering, sale, and disposal of such stolen explosive material.

Sec. 112. Study to determine standards for determining what ammunition is capable of penetrating police body armor

This section requires the National Institute of Justice (“NIJ”) to conduct a study that will result in a standard protocol for identifying handgun bullets that are capable of penetrating body armor

commonly worn by police when shot from a handgun. The National Institute of Justice must report its findings to Congress with recommendations regarding its findings.

The current practice is to outlaw them by brand-name without regard to their specific component qualities.

TITLE II—INCREASED PENALTIES

Sec. 201. Mandatory minimum for certain explosives offenses

This provision rewrites section 844(f) of title 18, United States Code. It increases the maximum statutory penalties for crimes committed under this section, and also creates new mandatory minimum penalties for particular violations.

Current law only provides a 20-year statutory maximum penalty for any bombing or arson covered by the statute, regardless of whether any person is injured, or could have been injured. It does allow for the imposition of the death penalty if a death is caused by the offense. Section 201 would increase the maximum statutory penalty to 25 years for property damage caused by a bombing. If injury is risked or caused, the defendant will be subject to a mandatory minimum prison term of 20 years and up to 40 years in jail. If death occurs as a result of the offense, the defendant shall be sentenced to a term of imprisonment of not less than 30 years and up to life; the death penalty remains available in such cases.

A defendant convicted of bombing federal properties resulting in deaths is not currently subject to any mandatory minimum sentence.

Subsection (b) conforms section 81 of title 18, United States Code, so the penalties under that section are the same as those provided by section 201 of this legislation. Subsection (c) extends the statute of limitations for violations of sections 81 or 844 (f), (b), or (i) of title 18, United States Code, from five to seven years.

Sec. 202. Increased penalty for explosive conspiracies

This section creates a new penalty provision under section 844 of title 18, United States Code, so that conspiracies under section 844 will be punished the same as the substantive offenses except that the death penalty cannot be imposed for the conspiracy alone.

Sec. 203. Increased and alternate conspiracy penalties for terrorism offenses

This section will make it a crime to conspire to commit any offense under the specifically listed sections of title 18, United States Code found in this provision. Adding the conspiracy language to these criminal statutes will enable the Government to prosecute and punish those offenses appropriately. Without a conspiracy element in the statutory language, the Government must rely on title 18, United States Code, section 371, to prosecute conspiracies generally. Section 371 only carries a five year statutory maximum penalty, even if the underlying offense requires a much higher penalty. This section corrects this anomaly.

Sec. 204. Mandatory penalty for transferring a firearm knowing that it will be used to commit a crime of violence

This section does two things. First, it adds language making it a crime to “have reasonable cause to believe” that a transferred firearm will be used to commit a crime of violence or a drug trafficking crime. This language replicates language found in current § 922 (f)(1) and (i). This provision also makes punishment for this offense parallel to those penalties that are currently available for first time offenders under 924(c), which is a mandatory minimum 5 year term of imprisonment.

Sec. 205. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence

This section is patterned after section 204 above and creates a criminal prohibition on the transfer of explosive materials, “knowing or having reasonable cause to believe” they will be used to commit a crime of violence or drug trafficking offense. Crimes committed under this section will be subject to the same penalties as are provided for a first conviction of section 844(h) of title 18, United States Code, which is a mandatory minimum 5 year term of imprisonment.

Sec. 206. Directions to Sentencing Commission

This section gives the U.S. Sentencing Commission amendment authority to expand the scope of its Chapter 3 enhancement for “international terrorism offenses” under the U.S. Sentencing Guidelines, to include all terrorism offenses. In amendments to the Sentencing Guidelines that became effective November 1, 1996 a new provision that substantially increases jail time for offenses committed in connection with a crime of international terrorism. This section of the bill will make that new provision applicable to all terrorist offenses whether international or domestic, without having to wait until November 1996 for the change to become law.

TITLE III—INVESTIGATIVE TOOLS

Sec. 301. Interceptions of communications

Subsection (a) adds various crimes to the list of criminal offenses for which law enforcement agencies will be allowed to seek and obtain wiretap authority from the district courts.

Subsection (b) strengthens section 2518(b) of title 18, United States Code, which currently gives a district court judge discretion to order periodic reports during the pendency of an on-going wiretap interception. It will require the government to make a report to the authorizing judge on the 15th day following the commencement of the interception of communications. The report to the authorizing judge, will provide the authorizing judge with facts and information relating to the success or failure of the wiretap, and the law enforcement need to continue the wiretap. Current law, section 2518(b) gives the district court discretion to order the filing of a report, but it is not required by law.

Sec. 302. Pen registers and trap and trace devices in foreign counterintelligence investigations

This section will authorize pen register and trap and trace devices for use in foreign counterintelligence investigations (espionage) using the same threshold standard currently utilized in criminal investigations. A showing that the information sought is relevant to an ongoing foreign counterintelligence investigation, will be all that is required.

Foreign counterintelligence investigations are those that involve individuals believed to be agents of foreign powers, or inquiries relating to espionage activities by foreign powers themselves.

Sec. 303. Disclosure of certain consumer reports to the Federal Bureau of Investigation for foreign counterintelligence investigations

This section is a modified version of a bill introduced by Congressman Doug Bereuter of Nebraska. The Bereuter initiative passed the 103d Congress on two prior occasions by voice vote.²⁶

Section 303 is designed to enhance the FBI's counterintelligence and international terrorism investigative capabilities. It amends the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and provides the FBI with access, after first obtaining a judicial order, to information held by consumer reporting agencies for persons that are subject of foreign counterintelligence investigation. Once provided with identifying information, the FBI will be able to direct its investigation of financial service records under the Right to Financial Privacy Act.

This section stipulates that the FBI may request identifying information under certain circumstances and will be subject to appropriate controls on the use of such information. The legislation also includes a confidentiality clause which prohibits a credit reporting company from disclosing that the FBI has sought or obtained consumer report or identifying information. Finally, this section requires that any consumer report issued through this process shall not indicate that the FBI has sought any information.

This section also provides guidelines for the reimbursement of consumer reporting agencies by the FBI, places limits on the dissemination of this information outside the FBI, except to other law enforcement agencies as may be necessary for the conduct of a foreign counterintelligence investigation. The information may also be disclosed to military investigative services when the individual being investigated is a member of the armed services. The section also requires annual reports be made to Congress of all requests. Finally, this section sets forth parameters for punitive and disciplinary measures to be taken should unlawful disclosure of credit reports, records, or information occur.

²⁶ On October 5, 1994, the House passed Mr. Bereuter's initiative as a stand-alone bill (H.R. 5143) and as a provision of the Fair Credit Reporting Act Amendments (Sec. 123 of H.R. 5178). Both measures passed the House by voice vote. Inaction by the Senate caused both bills to die at the end of the 103d Congress.

Sec. 304. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in foreign counterintelligence and counterterrorism cases

This section will provide the FBI access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental businesses in counterintelligence and counterterrorism cases. Other than the records to be obtained under this section, the procedures, including the requirement of a court order, as established in Section 303, above, are likewise applicable under this section.

Sec. 305. Study of tagging explosive materials, detection of explosives and explosive materials, rendering explosive components inert, and imposing controls of precursors of explosives

This section requires the Attorney General to conduct a six-month study concerning (1) the tagging of explosive materials for purposes of detection and identification; (2) technology for devices to improve the detection of explosive materials; (3) whether common chemicals used to manufacture explosive materials can be rendered inert and whether it is feasible to require it; and (4) whether it is feasible to require controls to be imposed on certain precursor chemicals used to manufacture explosive materials. This section requires the Attorney General to submit a report to Congress containing the results of the study. The report will be made available to the public.

Sec. 306. Application of statutory exclusionary rule concerning intercepted wire or oral communications

This section limits the suppression of evidence obtained through wiretaps if a technical violation of the wiretap statute occurred, so long as the violation was the result of a good faith error in conducting the wiretap. This provision adopts the view that so long as the government is not purposefully violating the wiretap statute, any evidence obtained pursuant to an otherwise legitimate authorization order issued by a district court judge will not be excluded from trial use, grand jury presentation, or any other hearing. This simply codifies *United States v. Leon*, 468 U.S. 897 (1984). Additionally, this section will authorize the use of wiretap evidence in those limited situations where the wiretap is carried out by purely private individuals—meaning with no direction or inducement by law enforcement—even though the evidence was not lawfully obtained by the private party. This codifies the Supreme Court’s holdings in *Burdeau v. McDowell*, 256 U.S. 465 (1921) and its progeny.

Sec. 307. Exclusion of certain types of information from wiretap-related definitions

Subsection (a)(3) excludes from the definition of “electronic communication” under the wiretap statute “information stored in a communications system used for the electronic storage and transfer of funds.” This will allow law enforcement to obtain such bank records through the usual grand jury subpoena, or other court order procedure without requiring a wiretap order for these purposes.

Subsection (b) eliminates “electronic communication” from the definition of “radio communications that are readily accessible to the general public.” This inclusion of “electronic communication” negated the need to exempt from the wiretap coverage radio transmissions, i.e., scanners, CBs, and Ham radio signals. “Electronic communications” are already specifically and separately covered by the wiretap statutes.

Sec. 308. Addition of conspiracies to temporary emergency wiretap authority

This section amends section 2518(7)(a) of title 18, United States Code. Section 2518(7)(a) already allows temporary emergency wiretaps in certain exigent circumstances, without prior court authorization, including life threatening situations, threats to national security, and organized crime conspiracies. This section adds terrorism conspiracies to that short list.

This provision is a codification of a well-established doctrine of fourth amendment jurisprudence: exigent circumstances may render the obtaining of a warrant before a search impractical. *Schmerber v. California*, 384 U.S. 757 (1966); *United States v. Karo*, 468 U.S. 705 (1984).

Sec. 309. Requirements for multipoint wiretaps

This section amends Section 2518(11) of title 18 United States Code, which allows, in limited circumstances, for an order authorizing electronic surveillance of an individual without a specification of the particular facility from which, or the place where, the communication is to be intercepted. Section 2518(11) currently requires that the application for “multi-point” interception authorization of “oral” communications, as compared to “wire” or “electronic” communications, identify the person to be intercepted and explain to the judge the reasons why the mobility of the suspect makes specification of the facility or place of interception impractical. In order for the warrant to issue, in such a case, the district court judge must make the finding that such specification is not practical. For “wire” and “electronic” communications the current statutory test is slightly different. Section 2518(11)(b) of title 18, United States Code, requires that an applicant²⁷ for “multi-point” wiretap authorization must show that the person to be intercepted has exhibited a “purpose or intent to thwart interception” of his criminal communications “by changing facilities.” This section makes the different standards uniform, when the government seeks authorization for multi-point wiretaps. Section 309 would still require all applications for multi-point wiretap surveillance to specifically identify the person to be intercepted and establish that specification of the facility or place is impractical, due to the circumstances and nature of the investigation.

This section does nothing to reduce the necessity of a probable cause finding that the target is engaged in specific criminal activity

²⁷ The applicant for any wiretap authorization sought by the federal government is an attorney for the government, typically an Assistant U.S. Attorney, who is responsible for independently reviewing the investigating agent’s affidavit supporting the probable cause determination asserted by the agent. The AUSA swears under oath and penalty of perjury, to the accuracy of the information contained in the agent’s affidavit and in the application for interception authorization.

and probable cause that the target will use telephone facilities in furtherance of that criminal activity. The provision maintains the other statutory requirements of minimization of non-pertinent conversations.

Sec. 310. Access to telephone billing records

This section corrects an unintended result of the passage and enactment of a provision of the Digital Telephony Act of 1994 (Pub. L. 103-414). Section 2709(b) of title 18, United States Code, as currently construed by phone companies only allows law enforcement access to subscriber information and long distance phone records, but not local phone records. This section clarifies that section, and will enable law enforcement to once again have authorized access to local phone records, which can be crucial to any criminal investigation.

Sec. 311. Requirement to preserve record evidence

This provision will ensure that all providers of wire or electronic communication services maintain and keep their records, when requested, for at least a 90 day period, during which time a court order to preserve those records will be obtained. Although most mainstream phone companies already preserve their records for more than this time period, the growth of small companies in the industry has resulted in services that discard records after shorter periods of time. With the destruction of those records, which could be critical in a wide variety of investigations, the information is then lost to law enforcement.

Sec. 312. Authority to request military assistance with respect to offenses involving biological and chemical weapons

This section authorizes the Attorney General to make a request of the Department of Defense to provide “technical and logistical” assistance in emergency situations involving biological weapons or chemical weapons of mass destruction. The military has special expertise and material for dealing with and diffusing these types of weapons. The Secretary of Defense would be allowed to decline to assist the Attorney General if the assistance would not adversely affect the military preparedness.

This section defines “emergency situation involving biological or chemical weapons of mass destruction” as a circumstance involving such a weapon “that poses a serious threat to the interests of the United States; and in which civilian expertise is not readily available to provide the required assistance to counter the threat involved; that the Defense Department’s special capabilities and expertise are needed to counter the threat; and that enforcement of the law would be seriously impaired if assistance from the Department of Defense were not provided.”

This section would allow the military to operate equipment, and to monitor, contain, disable, or dispose of a biological or chemical weapon or elements of the weapon.

Additionally, this section also requires the Attorney General and the Secretary of Defense to jointly issue regulations defining the scope and contours of the types of technical and logistical assist-

ance that is allowed under this section and the types of actions that the military may take under this section.

The language of this section makes plain in unambiguous terms, that the Attorney General and the Secretary of Defense cannot under any circumstances authorize the use of the military to arrest or to engage in any conduct involving searches for, and seizures of, evidence relating to violations of law, except that the military will be allowed to apprehend perpetrators or seize evidence if doing so was for the sole purpose of protecting human life.

Subsection (e) of this section requires the Secretary of Defense to seek reimbursement from the Attorney General as a condition for providing the “technical and logistical assistance.”

Subsection (f) limits the Attorney General and the Defense Secretary’s ability to delegate their authority under this provision only to the very top officials within their respective departments.

Sec. 313. Detention hearing

This section clarifies Section 3142(f) of title 18, United States Code, for judges involved in hearing detention motions pursuant to that statute.

Despite the unambiguous language of Rule 45(a) of the Federal Rules of Criminal Procedure, there has been inconsistent application of the time periods set out in this particular statute by judges and magistrate judges faced with motions for pre-trial detention. Currently, the statute provides that the detention hearing shall commence no later than three days after the making of the motion by the government for detention, and no longer than five days after the detention motion, if the defendant requests the delay.

Rule 45(a) of the Federal Rules of Criminal Procedure applies generally to all time periods involved in criminal matters and this section does not seek to change that application, rather it clarifies that general rule in this specific context. Rule 45(a) does not count intervening Saturdays, Sundays, or federal holidays to any time period set by statute or rule of less than 11 days.

Without adequate preparation time for such hearings, the government is often faced with proceeding without all available information. To assure that the government’s statutory rights in detention hearings are upheld, it is necessary for Congress to restate a portion of the rule in the statute. Furthermore, it should be noted that Congress has always understood Rule 45(a) to have general application to all time periods to be calculated in any criminal proceeding or matter in federal court.

Sec. 314. Reward authority of the Attorney General

This section provides the Attorney General with authority to grant rewards to individuals who assist the government in the arrest and prosecution of individuals engaged in felony offenses.

This section is consistent with the policies underlying rewards in criminal cases. Under this provision, the Attorney General can grant rewards of up to \$100,000 without notification to Congress. Beyond that, the Judiciary Committees of the House and Senate must be advised, not only of the fact of the reward but the reasons underlying the reward. These reports can be made to the Chairman of the respective committees and are expected to remain confiden-

tial, unless their disclosure is required constitutionally under the teachings of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).

Sec. 315. Definition of terrorism

This section provides a statutory definition of “terrorism”, and does so without federalizing any state crimes, and expanding the reach of the federal police power. It does not make any crime “terrorist” over which the federal government does not possess jurisdiction.

First, this definition acts as a significant limitation on the government to prosecute individuals who might violate section 104 of this bill, when enacted. To prosecute someone under that section, the Attorney General would first have to certify that the crime was one of terrorism, as defined under this section.

Secondly, the definition of terrorism is also important in the sentencing phase of a prosecution of federal law. The U.S. Sentencing Guidelines, in calculating the appropriate sentence to be imposed upon a convicted criminal therefore, authorizes the sentencing judge to consider the nature of the offense, and the motivation of the crime.

So, in order to keep a sentencing judge from assigning a terrorist label to crimes that are truly not terrorist, and to adequately punish the terrorist for his offense, it is appropriate to define the term.

TITLE IV—NUCLEAR MATERIALS

Sec. 401. Expansion of nuclear materials prohibitions

This title modifies current law to deal with the increased risk stemming from the destruction of certain nuclear weapons that were once part of the arsenal associated with the former Soviet Union. The bill seeks to expand the jurisdictional basis for prosecution of violations of title 18, United States Code, Section 831, as well as to widen the definition of nuclear materials.

Basically, this title expands the jurisdiction of the U.S. government to any instance where the offender or victim is a national of the United States. European nations have observed a significant increase in the number of cases involving the smuggling of nuclear materials from former Soviet-bloc nations.

TITLE V—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

This title is necessary to implement the “Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.” The U.S. is a party to that treaty.

Sec. 501. Definitions

This section defines relevant terms under this title of the bill.

Sec. 502. Requirement of detection agents for plastic explosives

This section creates four new criminal prohibitions under title 18, United States Code, Section 842. First, it prohibits the manufacture in the U.S. of plastic explosives not containing detection agents. Next, it outlaws the importation into, and the exportation

from, the U.S. of plastic explosives not containing such a detection agent. It also proscribes the shipping, transporting, transferring, receiving, and possession of plastic explosives that do not contain the required detection agents. Finally, it prohibits the failure to report, within 120 days after the date on which this law takes effect, the possession of any plastic explosives not containing detection agents.

Sec. 503. Criminal sanctions

This section provides a 10 year statutory maximum sentence for violations of the new criminal offenses.

Sec. 504. Exceptions

This section establishes exceptions and affirmative defenses to the application of this title's prohibitions.

Sec. 505. Investigative authority

This section grants investigative jurisdiction for offenses committed under this title to the Attorney General.

Sec. 506. Effective date

This section establishes the effective date for the provisions under this title.

TITLE VI—IMMIGRATION-RELATED PROVISIONS

Subtitle A—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

Sec. 601. Removal procedures for alien terrorists

This section amends the Immigration and Nationality Act (INA) by adding a new title V, entitled “Special Removal Procedures for Alien Terrorists.”

Section 501 provides definitions to apply to title V. An “alien terrorist” is an alien deportable under current section 241(a)(4)(B).

Section 502 (“ESTABLISHMENT OF SPECIAL REMOVAL COURT; PANEL OF ATTORNEYS TO ASSIST WITH CLASSIFIED INFORMATION”)

Sections 502 (a) through (c) require the Chief Justice of the Supreme Court to publicly designate 5 district court judges from 5 of the U.S. judicial circuits who shall constitute a special court with jurisdiction to conduct special removal proceedings. The terms of the judges first appointed shall be staggered that the term of one judge expires each year. The Chief Justice shall designate a chief judge, who shall serve a full five-year term.

Section 502(d) provides that the proceedings shall be conducted in conformance with section 103(c) of the Foreign Intelligence Surveillance Act of 1978.

Section 502(e) provides that the special court shall designate a panel of attorneys each of whom has a security clearance permitting access to classified information and has agreed to represent aliens lawfully admitted for permanent residence with respect to certain classified information used in special removal proceedings under the provisions of section 506(c).

Section 503 ("APPLICATION FOR INITIATION OF SPECIAL REMOVAL PROCEEDING") provides that when the Attorney General has classified information that an alien is an alien terrorist, the Attorney General may seek removal through the filing under seal, ex parte and in camera, of a written application with the special court. The application, made under oath or affirmation, shall identify the attorney making the application; indicate the approval of the Attorney General or Deputy Attorney General to the filing of the application based on a finding that the alien is removable under this title; identify the alien for whom special removal proceedings are sought; and a statement of facts to establish that the alien is an alien terrorist, is physically present in the United States, and that the use of removal procedures under title II of the Immigration and Nationality Act ("INA") would pose a risk to the national security of the United States. The Attorney General may dismiss a removal action under this title at any time.

Section 504 ("CONSIDERATION OF APPLICATION") provides that any one of the judges on the removal court shall consider, ex parte and in camera, the application and other information, including classified information, presented under oath or affirmation. A verbatim record shall be kept of any hearing on the application. The judge shall enter ex parte an order approving the application if there is probable cause to believe that the alien has been correctly identified, is an alien terrorist, and that adherence to the provisions of title II of the INA, regarding the removal of aliens would pose a risk to national security. The judge, in the case of denial, shall prepare a written statement of the reasons therefor.

If an order is issued under this section, the alien's rights regarding removal and expulsion shall be governed exclusively by this title. No other provisions of the INA shall apply, unless otherwise specified in this title.

Section 505 ("SPECIAL REMOVAL HEARINGS") provides that an alien shall be given reasonable notice of the nature of the charges and of the time and place of the hearing. The hearing shall be held expeditiously and by the same judge who granted the application for the special removal proceeding under section 504. The hearing shall be open to the public and the alien shall have the right to be represented by counsel. An alien unable to afford counsel shall have counsel assigned, in accordance with section 3006A of title 18. The alien may introduce evidence and, subject to section 506, may examine the evidence and cross-examine any witnesses. A verbatim record shall be kept and the decision shall be based on the evidence at the hearing.

An alien subject to proceedings under this section shall not be eligible for relief under section 208 (asylum), 243(h) (withholding of deportation), 244(a) (suspension of deportation), 244(e) (voluntary departure), 245 (adjustment of status), and 249 (registry).

The Department of Justice, or the alien, may request the judge to compel, by subpoena, the attendance of witnesses and the production of books, papers, documents, or other objects. Such requests may be made ex parte, but the judge may reveal an alien's request to the Department of Justice if the witness or material requested by the alien would reveal evidence, or the source of evidence, which the Department of Justice has received permission to

introduce in camera and ex parte under section 505(e) or section 506.

Section 505(e) provides that classified information shall be introduced in camera and ex parte, and that neither the alien nor the public shall be informed of such evidence, or its sources, other than by reference to a summary of the evidence prepared in accordance with section 506(b). Electronic surveillance information obtained through the Foreign Intelligence Surveillance Act of 1978 shall not be disclosed to the alien. The United States shall retain the right to seek protective orders and assert privileges ordinarily available to the U.S. to protect against the disclosure of classified information, including the military and state secrets privileges. The Federal Rules of Evidence shall not apply to hearings under this title.

At the close of the evidence, argument shall proceed with the Department of Justice opening and having final reply. Argument concerning evidence presented in camera and ex parte shall be heard under like circumstances. The Department has the burden to prove by clear and convincing evidence that the alien is an alien terrorist, and thus, subject to removal. If this burden is met, the judge shall order the alien detained, pending removal, and taken into custody, if the alien had been released pending the hearing. The judge shall prepare a written order of findings of fact and conclusions of law, but shall not disclose to the public or the alien the source or substance of information received in camera and ex parte.

Section 506 ("CONSIDERATION OF CLASSIFIED INFORMATION") provides that the judge shall consider each item of classified information in camera and ex parte. The Department shall prepare a written summary of such classified information so long as the summary does not pose a risk to the national security. The judge shall approve the summary if the judge finds that the summary is sufficient to inform the alien of the nature of the evidence and to permit the alien to prepare a defense. If the judge finds the summary insufficient, the Department shall have a reasonable opportunity to correct it.

If the summary remains insufficient, the judge shall terminate the proceedings unless the judge finds that the continued presence of the alien, or the provision of the summary, would cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If the judge makes these findings, the special removal proceeding shall continue, the alien shall be informed that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to section 505(e).

Section 506(c) provides special procedures for cases involving an alien lawfully admitted for permanent residence in which the judge determines that no summary of classified evidence can be provided to the alien. In such cases, the judge shall appoint a special attorney (see section 502(e)) to whom the classified information shall be disclosed for purposes of challenging its verity, in an in camera proceeding. The special attorney may not disclose the classified information to the alien, or to any other attorney that might be representing the alien, and is subject to a prison term of not less than 10, nor more than 25 years in prison for violating these restrictions.

Section 507 ("APPEALS") provides that the Department may seek review of a denial of an order to initiate a special removal hearing by filing an appeal within 20 days of the denial with the U.S. Court of Appeals for the D.C. Circuit. Either party may take an interlocutory appeal to the D.C. Circuit concerning evidentiary issues, including issues concerning the preparation and submission of a summary of classified information.

The decision of the judge after the special removal hearing may be appealed by either the alien, or the Department of Justice, only to the D.C. Circuit. In the case of an alien lawfully admitted for permanent residence denied a written summary of classified information under section 506(b)(4), and to whom the procedures under section 506(c) have been applied, there shall be an automatic appeal, unless affirmatively waived by the alien. To the extent such an appeal concerns classified information, the special attorney appointed for the alien shall represent the alien.

Appeals shall be filed within 20 days. This time limit is jurisdictional except with respect to those aliens subjected to the procedures set forth in section 506(c). The Court of Appeals shall hear all appeals from these special removal proceedings as expeditiously as possible, and shall issue a decision within 60 days of the district judge's final order. After the Court of Appeals decision, a petition for certiorari may be filed by either party to the Supreme Court. An appeal of an order of detention also shall be taken to the D.C. Circuit and shall be adjudicated in accordance with the provisions of sections 3145 through 3148 of title 18.

Section 508 ("DETENTION AND CUSTODY") provides that the Attorney General may take into custody any alien against whom an application under section 503 has been filed. An alien lawfully admitted for permanent residence is entitled to a release hearing, and may be released if the alien demonstrates that he is not likely to flee and that his release will not endanger national security or the safety of any person. An alien in detention, under this title, shall be entitled to reasonable opportunity to communicate with members of the alien's family, or the alien's attorney, and to have contact with diplomatic officers of the alien's country of nationality, if the alien so desires.

If the special removal judge denies the order sought for in an application under section 503, the alien shall be released from custody. If the Department seeks review of the denial, the judge shall impose the least restrictive conditions that will reasonably assure the appearance of the alien, so long as the release will not endanger the safety of any other person, or the community. If no such conditions exist, the alien shall continue in detention in the custody of the Attorney General.

If, after the hearing under this title, the judge decides that the alien should not be removed, the alien shall be released, unless the Attorney General takes an appeal, in which case the alien shall be detained subject to the conditions in section 3142 of title 18. If, after the hearing, the judge decides that the alien is to be removed, however, the alien shall be detained pending any subsequent judicial review.

An alien ordered removed shall be removed to any country of the alien's designation. If the alien refuses to designate a country, or

if removal to the designated country would impair an international obligation, or would otherwise adversely affect U.S. foreign policy, the removal shall be to any country willing to receive the alien. If no country is willing to receive the alien, the alien shall be detained in the custody of the Attorney General. The Attorney General shall report to the alien's attorney every 6 months regarding efforts to find a country willing to accept the alien. An alien in this situation may be released by the Attorney General only under such conditions as the Attorney General may prescribe. The removal of an alien ordered removed under this title may be delayed pending a criminal trial against the alien and the service of any sentence imposed following conviction of the alien.

This section also amends section 276(b) to provide that an alien terrorist removed under the provisions of this title, or under subsection 235(c) who enters or attempts to enter the U.S. without the permission of the Attorney General, shall be fined and imprisoned for 10 years.

Sec. 602. Funding for detention and removal of alien terrorists

This section authorizes to be appropriated, in addition to amounts already appropriated, \$5,000,000 for the purpose of detaining and deporting alien terrorists.

PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN
TERRORISTS

Sec. 611. Membership in terrorist organization as ground for exclusion

This section amends section 212(a)(3)(B) of the INA to provide that an alien who is a representative or member of an organization that engages in, or actively supports or advocates, terrorist activity is excludable from the U.S.

This section also amends section 212(a)(3)(B) by adding a new clause (iv), defining "terrorist organization" to mean a foreign organization designated in the Federal Register by the Secretary of State, in consultation with the Attorney General, based on a finding that the organization engages in, or has engaged in, terrorist activity that threatens the national security. Congress shall be notified at least 3 days prior to the published designation, and has the authority to remove, by law, any such designation. The designation shall be effective for 2 years. It cannot be renewed any earlier than 60 days prior to its expiration. The designation may be removed by the Secretary of State, in consultation with the Attorney General at any time. The intention to remove the designation must be published in the Federal Register prior to its removal.

This section also provides for judicial review of the terrorist designation by the Secretary. This review must occur within 30 days of the designation. Only the foreign organization, or its agent, will have standing to challenge the "terrorist" designation.

This section delineates that the review of the designation will be based solely upon the administrative record, which as indicated above, may include classified information. The court can only set aside the "terrorist" designation if it finds that the Secretary's designation is "arbitrary, capricious, an abuse of discretion, or other-

wise not in accordance with the law, lacking substantial support in the administrative record taken as a whole or is classified information * * * contrary to constitutional right, power, privilege, or immunity, or not in accord with the procedures required by law.”

This section also adds a new clause (v) to section 212(a)(3)(B), defining “representative” to include an officer, official, or spokesman of the organization and any person who directs, counsels, commands, or induces the organization to engage in terrorist activity. The determination of the Secretary of State or Attorney General that an alien is a representative of a terrorist organization is also subject to judicial review. The extent of judicial review contemplated here is limited to the record established by the Immigration and Naturalization Service (INS), and includes any and all classified information available to the INS in making its designation. Appellate review of this designation is also limited and shall be based upon the substantial evidence rule.

Sec. 612. Denial of asylum to alien terrorists

This section amends section 208 to provide that an alien may not be granted asylum if the alien is excludable under the provisions of section 212(a), or deportable under the provisions of section 241(a) relating to alien terrorists.

Sec. 613. Denial of other relief for alien terrorists

This section amends sections 243(h)(2) (withholding of deportation), 244(a) (suspension of deportation), 244(e)(2) (voluntary departure), 245(c) (adjustment of status), and 249(d) (registry) to provide that an alien who is deportable under section 241(a)(4)(B) is not eligible for these forms of relief.

Subtitle B—Expedited Exclusion

Sec. 621. Inspection and exclusion by immigration officers

This section amends section 235(b), regarding the inspection and exclusion of aliens arriving at a port of entry. New section 235(b)(1) provides that if an examining immigration officer determines that an alien is inadmissible under section 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid documents), the officer may order the alien removed without further hearing or review.

An alien who states a fear of persecution, or wishes to apply for asylum, will be referred for interview by an asylum officer. If the officer finds that the alien has a credible fear of persecution, the alien shall be detained for further consideration of the application for asylum. If the alien does not meet this standard, and the officer’s decision is upheld by a supervisory asylum officer, the alien will be ordered removed. An alien may consult with a person of his or her choosing before the interview, at no expense to the Government and without delaying the interview. A “credible fear of persecution” means that it is more likely than not that the alien is telling the truth and the alien has a reasonable possibility of establishing eligibility for asylum. The Attorney General is required to write and promulgate regulations for these procedures consistent with the intent of this provision.

There is no administrative review of a removal order entered into under this paragraph, but an alien claiming under penalty of perjury to be lawfully admitted for permanent residence shall be entitled to administrative review of such an order. An alien ordered removed under this paragraph may not make a collateral attack against the order in a prosecution under section 275(a) (illegal entry) or 276 (illegal reentry).

New section 235(b)(2) provides that an alien who is not clearly and beyond a doubt entitled to enter (other than an alien subject to removal under paragraph (b)(1), or an alien crewman or stow-away) shall be detained for a hearing before a special inquiry officer (immigration judge).

Sec. 622. Judicial review

Subsection (a) of this section amends section 106 of the INA to add a new subsection (e). Subsection (e) precludes judicial review, subject to the provisions of paragraph (e)(2), of a decision to exclude an alien from entry under the expedited exclusion provisions of new section 235(b)(1). Paragraph (e)(2) allows for habeas corpus review limited to the issues of whether the petitioner is an alien (provided the alien makes a non-frivolous claim of U.S. nationality), whether the alien was ordered specially excluded pursuant to section 235(b)(1)(A), and whether the petitioner is a lawful permanent resident alien entitled to judicial review according to section 235(b)(1)(e)(i).

A reviewing court may not order any relief other than to require that the alien receive an exclusion hearing pursuant to section 236, or a determination in accordance with section 235(c) (special procedures for aliens excludable on national security grounds) or section 273(d) (procedures for stowaways).

Subsection (b) of this section amends section 235 of the INA by adding a new subsection (d), which precludes collateral attack in an action for assessment of penalties for improper entry or re-entry under section 275 or 276 of the validity of an order of exclusion, special exclusion, or deportation made under section 235, 236, or 242 of the INA.

Sec. 623. Exclusion of aliens who have not been inspected and admitted

This section amends section 241 of the INA by adding a new subsection (d). Subsection (d) provides that an alien present in the United States, who has not been admitted after inspection in accordance with section 235 of the INA, is deemed to be seeking entry and admission and shall be subject to examination and exclusion in accordance with Chapter 4 of Title II of the INA. Such an alien must be provided the opportunity to establish that he or she has been lawfully admitted to the United States.

This section by operation of law, returns “to the border” any alien who has entered the United States unlawfully, regardless of the duration of his or her presence in the United States. The Committee expects that such aliens will be subject to the procedures for examination and exclusion of arriving aliens set forth in sections 235 and 236 of the INA, and that the alien will have the opportunity to prove his claim of legal entry. As long as this opportunity

is provided, however, the Committee believes that the alien can and should be subject to expedited exclusion and removal from the United States. There ought to be no constitutional impediment to the expedited removal from the United States of an alien who has entered the United States illegally. The fact that an alien has successfully evaded requirements for lawful entry should not provide that alien with an entitlement to procedural protections and relief (other than the opportunity to contest the allegation of illegal entry) that are not available to an alien who seeks entry through the normal admissions process.

Subtitle C—Improved Information and Processing

PART 1—IMMIGRATION PROCEDURES

Sec. 631. Access to certain confidential INS files through court order

Subsection (a) amends section 245(A)(c)(5) of the INA by redesignating Subparagraphs (A) through (C) and by adding a new subparagraph (C) to permit the Attorney General to make an application to a Federal judge, and for such Federal judge to authorize disclosure of information in an application for legalization for the following purposes: to identify an alien believed to be dead or severely incapacitated; or for criminal law enforcement purposes if the alleged criminal activity occurred after the legalization application was filed and involves terrorist activity, is a crime prosecutable as an aggravated felony (without regard to length of sentence), or poses an immediate risk to life or national security.

Subsection (b) makes parallel amendments to the confidentiality provisions in section 210(b) (Special Agricultural Worker Program).

The purpose of this section is to amend the provisions in sections 210 and 245A protecting the confidentiality of applications for legalization and to ensure that information contained in such applications would not be used for purposes of immigration law enforcement. A limited waiver of such confidentiality, subject to prior approval by a federal judge, is appropriate in order to identify an alien who is dead or severely incapacitated, or if the alien is alleged to have committed a serious criminal offense after the date of the application. Disclosure in these limited circumstances will not undermine the initial policy of confidentiality. An alien filing for legalization did not have a reasonable expectation, under the laws existing at that time, that information in his or her application could not be used for the purpose of identifying that alien for compelling circumstances, unrelated to immigration enforcement, that would arise after the filing of the application. The government interest in securing such information is compelling, and the requirement of judicial approval will further ensure that the legitimate confidentiality rights of legalization applicants are protected.

Sec. 632. Waiver authority concerning notice of denial of application for visas

This section amends section 212(b) of the INA to permit the Secretary of State to waive the requirement that the alien be provided notice of the reasons for denial, in the case of an alien denied a visa by a consular officer on the basis of the exclusion grounds in

section 212(a)(2) (criminal activity) or 212(a)(3) (national security and terrorist) of the INA. Currently, all foreign nationals who are denied a visa are entitled to notice of the basis for the denial. This creates a difficult situation in those instances where an alien is denied entry on the basis, for example, of being a drug trafficker or a terrorist. Clearly, the information that U.S. government officials are aware of such drug trafficking or terrorist activity would be highly valued by the alien and may hamper further investigation and prosecution of the alien and his or her confederates.

An alien has no constitutional right to enter the United States and no right to be advised of the basis for the denial of such a privilege. Thus, there is no constitutional impediment to the limitation on disclosure in this section.

PART 2—ASSET FORFEITURE FOR PASSPORT AND VISA OFFENSES

Sec. 641. Criminal forfeiture for passport and visa related offenses

This section provides for criminal asset forfeiture of property belonging to anyone engaged in fraudulent passport and visa related criminal offenses. Individuals who engage in criminal activity should not be entitled to keep any proceeds or fruits of their illegal endeavors. Likewise, it stands to reason that any tangible items used to accomplish a criminal violation should be removed from a perpetrator's possession. Criminal asset forfeiture requires the indictment by a grand jury of the violating property; proof by the government at trial of the guilt of the property involved in the offense, which guilt must be established beyond a reasonable doubt; and, a unanimous jury verdict of the guilty nature of the property involved.

Sec. 642. Subpoenas for bank records

This section authorizes the issuance of subpoenas for bank records in any asset forfeiture proceeding relating to violations of passport and visa related criminal offenses.

Sec. 643. Effective date

This section provides the effectiveness date for this subtitle, which will begin 90 days after the date of enactment of this Act.

Subtitle D—Employee Verification by Security Services Companies

Sec. 651. Permitting security services companies to request additional documentation

This section restricts the application of section 274B(a)(6) of the INA (8 U.S.C. §1324b(a)(6)), which otherwise prohibits potential employers of foreign nationals from requesting additional or different documentation establishing employment authorization and identity from that provided by the alien seeking employment. Currently, the INA makes it an “unfair immigration-related employment practice” to refuse to honor documents tendered by foreign nationals seeking employment in the United States if the documents tendered reasonably appear on their face to be genuine. This section will allow employers to ask and require foreign nationals seeking security-related jobs to present additional forms of identi-

fication, and verification of authorization to work while in the United States, beyond the bare minimum requirements set forth in section 274A(b).

TITLE VII—AUTHORIZATION AND FUNDING

Sec. 701. Authorization of appropriations

This section authorizes appropriation of “such sums as are necessary” to the FBI for three areas of law enforcement preparedness. Resulting appropriations would first be directed to the hiring of additional FBI personnel and to purchasing necessary equipment. The funding would also be earmarked for the establishment of a Domestic Counterterrorism Center, within the FBI. Finally, the funding authorized in § 701 would also help the FBI defray major costs associated with its necessary coverage of public events viewed as potential targets of terrorist activity.

Sec. 702. Civil monetary penalty surcharge and telecommunications carrier compliance payments

This section amends the Communications Assistance for Law Enforcement Act passed and enacted last Congress (Pub. L. 103–414). This section provides a 40% surcharge to each civil fine imposed upon any party found to have violated a federal statute or regulation in a lawsuit or administrative action in which the United States seeks a civil sanction. The surcharge funds will be deposited into a fund to pay for the development of future technology for use by law enforcement that will provide the government with access to digital communications when legitimate law enforcement needs arise, subject to court order.

At present, the telephone service providers are absorbing the cost of retro-fitting the equipment currently used by law enforcement for such digital electronic surveillance activities. For future technological advancements, however, the 103d Congress mandated the United States to fund the development of software and equipment to accommodate the government’s law enforcement needs. The amounts authorized will be subject to appropriations.

Sec. 703. Firefighter and emergency services training

This section authorizes the Attorney General to provide grants to metropolitan fire and emergency service departments for the purposes of providing specialized training, or equipment, used to respond to terrorist attacks. The Attorney General is required to consult with the Federal Emergency Management Agency prior to awarding such grants. This section authorizes the appropriation of \$5,000,000 to carry out the purposes of this section.

Sec. 704. Assistance to foreign countries to procure explosive detection devices and other counterterrorism technology

This section authorizes the appropriation of funds, not to exceed \$10,000,000, to the Attorney General for each fiscal year to provide assistance to foreign countries facing an imminent danger of terrorist attack, which threatens American security interests or U.S. nationals. It is expected that the Attorney General will consult with the Secretary of State prior to granting any financial assistance

under this section to any foreign country. Consultation with the Secretary of the Treasury is also strongly encouraged in this regard as well.

Sec. 705. Research and development to support counterterrorism technologies

This section authorizes the appropriation of funds, not to exceed \$10,000,000, to the National Institute of Justice Science and Technology Office to undertake various research and development projects to identify or create counterterrorism technologies. The funds authorized, but subject to appropriations, will enable the government to develop technology that will enable the United States to avoid and combat terrorist attacks. These funds will also help to develop standards to ensure compatibility of new products with relevant national defense and security systems. Moreover, it is anticipated that these funds will enable the government to identify and assess requirements for technologies that can be used to establish a national program aimed at assisting state and local law enforcement agencies in their fight against terrorist attacks.

TITLE VIII—MISCELLANEOUS

Sec. 801. Machine readable visas and passports

This section amends the Foreign Relations Authorization Act, fiscal years 1994 and 1995 (P.L. 103–236), to authorize not more than \$250,000,000 in fees collected for processing visa applications during FYs 1996 and 1997 as to cover the State Department's costs relating to its border security program. The State Department can use the funds to develop the technological infrastructure to create, support, and operate machine readable visa and automated name-check machines. Moreover, the funds can be used to improve the quality and security of United States' passports and to investigate passport and visa fraud.

The enhancement of the integrity of the United States passport is solely meant to enable greater protection of our border security. Improvement of our passports is not intended to create any national identification system. This section is strictly meant to improve our ability to preclude the entry into the United States of undesirable foreign nationals, who might otherwise attempt to utilize a fraudulent passport to gain unlawful entry into this country.

Sec. 802. Study of State licensing requirements for the purchase and use of high explosives

This section requires the Treasury Secretary, together with the FBI, to conduct a 180-day study of the licensing requirements applicable in the various states for the purchase and use of commercial high explosives. The phrase "commercial high explosives" is defined, by way of illustration, to include "detonators, detonating cards, dynamite, water gel, emulsion, blasting agents, and boosters." This section also requires the Treasury Secretary to report the results of the study to Congress. He shall make all appropriate recommendations based upon the results of the study.

Sec. 803. Compensation of victims of terrorism

This section allows for compensation to victims of terrorist acts. The language of the existing statute does not include terrorism victims among the categories of crime for which compensation is available. It will allow for compensation of Americans victimized outside the United States. The funds for compensation are derived from the currently existing federal victims' compensation fund.

Sec. 804. Jurisdiction for lawsuits against terrorist states

This section will allow United States nationals to bring suit against foreign states for "an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act. The lawsuit must allege that the terrorist act was undertaken by an "official, employee, or agent" of a foreign country, "while acting within the scope of his office, employment, or agency." It will allow these lawsuits to proceed in U.S. District Court, whereas currently such lawsuits are precluded. It is expected that a lawsuit proceeding under this section will be brought either by the victim himself, or by his estate in the case of death or mental incapacity.

This provision has retroactive application to the extent other applicable statute of limitations periods have not already expired.

Sec. 805. Study of publicly available instructional material on the making of bombs, destructive devices, and weapons of mass destruction

This section requires the Attorney General to undertake a 180-day study of publicly available literature, and material, instructing how to make bombs, destructive devices, or weapons of mass destruction. The study is to include a review of print, electronic, and film media in this regard. This provision requires the Attorney General to determine the extent to which the availability of this material has been used in terrorism incidents, and the likelihood of its use for such activity in the future.

This section also mandates that the Attorney General review existing federal laws having application to this material and the need or utility of any additional statutory coverage. Furthermore, the Attorney General must render a legal analysis of the protection provided this material by the First Amendment.

The Attorney General is required to submit a report of findings to Congress and make that report available to the public.

Sec. 806. Compilation of statistics relating to intimidation of government employees

This section establishes findings by Congress that acts of violence against all levels of government employees are on the increase, that such acts create a danger to our constitutional form of government, and that additional information is needed to fully understand the true nature and source of the dangers faced by public servants.

This section then directs the Attorney General to acquire and compile data for each calendar year, beginning in 1990, reflecting crimes and incidents of threats of violence against federal, state,

and local government employees on account of the performance of their public duties. The Attorney General is required to publish an annual summary of the collected data.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

Chap.		Sec.
1.	General provisions	1
2.	Aircraft and motor vehicles	31
	* * * * *	
122.	<i>Access to certain records</i>	2720
	* * * * *	

CHAPTER 2—AIRCRAFT AND MOTOR VEHICLES

* * * * *

§ 32. Destruction of aircraft or aircraft facilities

(a) Whoever willfully—

(1) * * *

* * * * *

(7) attempts *or conspires* to do anything prohibited under paragraphs (1) through (6) of this subsection; shall be fined under this title or imprisoned not more than twenty years or both.

(b) Whoever willfully—

(1) * * *

* * * * *

(4) attempts *or conspires* to commit an offense described in paragraphs (1) through (3) of this subsection; shall [if the offender is later found in the United States,] be fined under this title or imprisoned not more than twenty years, or both. *There is jurisdiction over an offense under this subsection if a national of the United States was on board, or would have been on board, the aircraft; an offender is a national of the United States; or an offender is afterwards found in the United States. For purposes of this subsection, the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act.*

* * * * *

§ 37. Violence at international airports

(a) OFFENSE.—A person who unlawfully and intentionally, using any device, substance, or weapon—

(1) performs an act of violence against a person at an airport serving international civil aviation that causes or is likely to cause serious bodily injury (as defined in section 1365 of this title) or death; or

(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport, or attempts *or conspires* to do such an act, shall be fined under this title, imprisoned not more than 20 years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) JURISDICTION.—There is jurisdiction over the prohibited activity in subsection (a) if—

(1) the prohibited activity takes place in the United States; or

(2) the prohibited activity takes place outside the United States and (A) the offender is later found in the United States; or (B) *an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))*.

* * * * *

CHAPTER 5—ARSON

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§ 81. Arson within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to or burns, or attempts to set fire to or burn any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping, shall be [fined under this title or imprisoned not more than five years, or both] *imprisoned not more than 25 years or fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both*.

If the building be a dwelling or if the life of any person be placed in jeopardy, he shall be fined under this title or imprisoned not more than twenty years, or both.

* * * * *

CHAPTER 7—ASSAULT

* * * * *

§ 112. Protection of foreign officials, official guests, and internationally protected persons

(a) * * *

* * * * *

(c) For the purpose of this section “foreign government”, “foreign official”, “internationally protected person”, “international organization”, “*national of the United States*”, and “official guest” shall have the same meanings as those provided in section 1116(b) of this title.

* * * * *

(e) [If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.] *If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.* As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

* * * * *

§ 115. Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member

(a)(1) Whoever—

(A) assaults, kidnaps, or murders, or attempts *or conspires* to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; or

* * * * *

(2) Whoever assaults, kidnaps, or murders, or attempts *or conspires* to kidnap or murder, *or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or a member of the immediate family of any person who formerly served as a person designated in paragraph (1), with intent to retaliate against such person on account of the performance of official duties during the term of service of such person, shall be punished as provided in subsection (b).*

(b)(1) An assault in violation of this section shall be punished as provided in section 111 of this title.

(2) A kidnapping [or attempted kidnapping], *attempted kidnapping, or conspiracy to kidnap* in violation of this section shall be punished as provided in section 1201 of this title for the kidnapping [or attempted kidnapping], *attempted kidnapping, or conspir-*

acy to kidnap of a person described in section 1201(a)(5) of this title.

(3) A murder [or attempted murder], *attempted murder, or conspiracy to murder* in violation of this section shall be punished as provided in sections 1111 [and 1113], *1113, and 1117* of this title.

* * * * *

CHAPTER 10—BIOLOGICAL WEAPONS

* * * * *

§ 175. Prohibitions with respect to biological weapons

(a) IN GENERAL.—Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, *or conspires to do so*, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.

* * * * *

§ 178. Definitions

As used in this chapter—

(1) * * *

* * * * *

(3) the term “delivery system” means—

(A) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(B) any vector; [and]

(4) the term “vector” means a living organism capable of carrying a biological agent or toxin to a host[.]; *and*

(5) *the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).*

* * * * *

CHAPTER 39—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

* * * * *

§ 831. Prohibited transactions involving nuclear materials

(a) Whoever, if one of the circumstances described in subsection (c) of this section occurs—

(1) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material *or nuclear byproduct material* and—

(A) thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property *or the environment*; or

[(B) knows that circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property;]

(B)(i) circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property or the environment; or (ii) such circumstances are represented to the defendant to exist;

(2) with intent to deprive another of nuclear material *or nuclear byproduct material*, knowingly—

(A) takes and carries away nuclear material *or nuclear byproduct material* of another without authority;

(B) makes an unauthorized use, disposition, or transfer, of nuclear material *or nuclear byproduct material* belonging to another; or

(C) uses fraud and thereby obtains nuclear material *or nuclear byproduct material* belonging to another;

(3) knowingly—

(A) uses force; or

(B) threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury;

and thereby takes nuclear material *or nuclear byproduct material* belonging to another from the person or presence of any other;

(4) intentionally intimidates any person and thereby obtains nuclear material *or nuclear byproduct material* belonging to another;

(5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection;

(6) knowingly threatens to use nuclear material *or nuclear byproduct material* to cause death or serious bodily injury to any person or substantial damage to property *or the environment* under circumstances in which the threat may reasonably be understood as an expression of serious purposes;

* * * * *

(c) The circumstances referred to in subsection (a) of this section are that—

(1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

[(2) the defendant is a national of the United States, as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101);]

(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;

(3) [at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and] after the conduct required for the offense occurs the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States; [or]

(4) the conduct required for the offense occurs with respect to the carriage of a consignment of **【nuclear material for peaceful purposes】** *nuclear material or nuclear byproduct material* by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is the United States~~【.】~~; or

(5) *the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.*

* * * * *

(f) As used in this section—

(1) the term “nuclear material” means material containing any—

(A) plutonium **【with an isotopic concentration not in excess of 80 percent plutonium 238】**;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) *enriched uranium, defined as* uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(2) *the term “nuclear byproduct material” means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;*

【(2)】 (3) the term “international organization” means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

【(3)】 (4) the term “serious bodily injury” means bodily injury which involves—

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; **【and】**

【(4)】 (5) the term “bodily injury” means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of a function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary~~【.】~~;

(6) the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(7) the term “United States corporation or other legal entity” means any corporation or other entity organized under the laws of the United States or any State, district, commonwealth, territory or possession of the United States.

* * * * *

CHAPTER 40—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

* * * * *

§ 841. Definitions

As used in this chapter—

(a) * * *

* * * * *

(o) “Convention on the Marking of Plastic Explosives” means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

(p) “Detection agent” means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

(q) “Plastic explosive” means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.

§ 842. Unlawful acts

(a) * * *

* * * * *

[(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.]

(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan, any stolen explosive materials which are moving as, which are part of, which constitute, or which have been shipped or transported in, interstate or foreign commerce, either before or after such materials were stolen, knowing or having reasonable cause to believe that the explosive materials were stolen.

* * * * *

(l) It shall be unlawful for any person to manufacture any plastic explosive which does not contain a detection agent.

(m)(1) it shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive which does not contain a detection agent.

(2) Until the 15-year period that begins with the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States has expired, paragraph (1) shall not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive which was imported, brought into, or manufactured in the United States before the effective date of this subsection by or on behalf of any agency of the United States performing military or police functions (including any military Reserve component) or by or on behalf of the National Guard of any State.

(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent.

(2)(A) During the 3-year period that begins on the effective date of this subsection, paragraph (1) shall not apply to the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States before such effective date by any person.

(B) Until the 15-year period that begins on the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States has expired, paragraph (1) shall not apply to the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States before the effective date of this subsection by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State.

(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the effective date of this subsection, to fail to report to the Secretary within 120 days after the effective date of this subsection the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.

* * * * *

§ 844. Penalties

[(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined under this title or imprisoned not more than ten years, or both.]

(a) Any person who violates subsections (a) through (i) or (l) through (o) of section 842 of this title shall be fined under this title, imprisoned not more than 10 years, or both.

* * * * *

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of [commerce,] *interstate or foreign commerce, or in or affecting interstate or foreign commerce,* willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than five years or fined under this title, or both.

[(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.]

(f) Whoever damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be fined under this title or imprisoned for not more than 25 years, or both, but—

(1) if personal injury results to any person other than the offender, the term of imprisonment shall be not more than 40 years;

(2) if fire or an explosive is used and its use creates a substantial risk of serious bodily injury to any person other than the offender, the term of imprisonment shall not be less than 20 years; and

(3) if death results to any person other than the offender, the offender shall be subject to the death penalty or imprisonment for any term of years not less than 30, or for life.

* * * * *

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment. [No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.]

* * * * *

(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.

(o) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3) of this title) or drug trafficking crime (as defined in section 924(c)(2) of this title) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of the explosive materials.

§ 845. Exceptions; relief from disabilities

(a) Except in the case of subsections (l), (m), (n), or (o) of section 842 and subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof and which pertains to safety,

* * * * *

(c) It is an affirmative defense against any proceeding involving subsection (l), (m), (n), or (o) of section 842 of this title if the proponent proves by a preponderance of the evidence that the plastic explosive—

(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(A) research, development, or testing of new or modified explosive materials;

(B) training in explosives detection or development or testing of explosives detection equipment; or

(C) forensic science purposes; or

(2) was plastic explosive which, within 3 years after the effective date of this paragraph, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this subsection, the term 'military device' includes shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

§846. Additional powers of the Secretary

The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of *subsection (m) or (n) of section 842 or subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title. The Attorney General shall exercise authority over violations of subsection (m) or (n) of section 842 and subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title only when they are committed by a member of a terrorist or revolutionary group. In any matter involving a terrorist or revolutionary group or individual, as determined by the Attorney General, the Attorney General shall have primary investigative responsibility and the Secretary shall assist the Attorney General as requested.*

* * * * *

CHAPTER 41—EXTORTION AND THREATS

* * * * *

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons

(a) * * *

* * * * *

(c) For the purpose of this section “foreign official”, “internationally protected person”, “*national of the United States*”, and “official guest” shall have the same meanings as those provided in section 1116(a) of this title.

(d) [If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.] *If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.*

* * * * *

CHAPTER 44—FIREARMS

* * * * *

§ 924. Penalties

(a) * * *

* * * * *

(h) Whoever knowingly transfers a firearm, knowing *or having reasonable cause to believe* that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be [imprisoned not more than 10 years, fined in accordance with this title, or both.] *subject to the same penalties as may be imposed under subsection (c) for a first conviction for the use or carrying of the firearm.*

* * * * *

CHAPTER 45—FOREIGN RELATIONS

Sec.

951. Agents of foreign governments.

* * * * *

[956. Conspiracy to injure property of foreign government.]

956. *Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country.*

* * * * *

[§ 956. Conspiracy to injure property of foreign government

[(a) If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated with-

in a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined under this title or imprisoned not more than three years, or both.

[(b) Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy.]

§ 956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country

(a)(1) *Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).*

(2) *The punishment for an offense under subsection (a)(1) of this section is—*

(A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and

(B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

(b) *Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.*

* * * * *

CHAPTER 46—FORFEITURE

* * * * *

§ 982. Criminal forfeiture

(a)(1) * * *

* * * * *

(6) *The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States any property, real or personal, which the person used, or in-*

tended to be used, in committing, or facilitating the commission of, the violation, and any property constituting, or derived from, or traceable to, any proceeds the person obtained, directly or indirectly, as a result of such violation.

(b)(1) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed—

(A) in the case of a forfeiture under subsection (a)(1) of this section, by subsections (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853); and

(B) in the case of a forfeiture under subsection (a)(2) or (a)(6) of this section, by subsections (b), (c), (e), and (g) through (p) of section 413 of such Act.

* * * * *

§986. Subpoenas for bank records

(a) At any time after the commencement of any action for forfeiture in rem brought by the United States under section 1028, 1541, 1542, 1543, 1544, 1546, 1956, 1957, or 1960 of this title, section 5322 or 5324 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

* * * * *

CHAPTER 51—HOMICIDE

* * * * *

[§1114. Protection of officers and employees of the United States

[Whoever kills or attempts to kill any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or member of the United States Capitol Police, any member of the Coast Guard, any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions, any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer

or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands or any other commonwealth, territory, or possession of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Education, the Department of Health and Human Services, the Consumer Product Safety Commission, Interstate Commerce Commission, the Department of Commerce, or of the Department of Labor or of the Department of the Interior or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions, or any officer or employee of the Department of Veterans Affairs assigned to perform investigative or law enforcement functions, or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section, any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration, or any other officer or employee of the United States or any agency thereof designated for coverage under this section in regulations issued by the Attorney General engaged in or on account of the performance of his official duties, or any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with sections 3711 and 3716–3718 of title 31 or other statutory authority shall be punished, in the case of murder, as provided under section 1111, or, in the case of manslaughter, as provided under section 1112. except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.]

§1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished, in the case of murder, as provided under section 1111, or in the case of manslaughter, as provided under section 1112, or, in the case of attempted murder or manslaughter, as provided in section 1113.

* * * * *

§1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

(a) * * *

(b) For the purposes of this section:

(1) * * *

* * * * *

(7) “National of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(c) [If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.] *If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.*

* * * * *

CHAPTER 55—KIDNAPPING

* * * * *

§1201. Kidnapping

(a) * * *

* * * * *

(e) [If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.] *If the victim of an offense under subsection (a) is an internationally*

protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49. For purposes of this subsection, the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

* * * * *

§ 1203. Hostage taking

(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts *or conspires* to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

* * * * *

CHAPTER 84—PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION, KIDNAPPING, AND ASSAULT

* * * * *

§ 1751. Presidential and Presidential staff assassination, kidnapping, and assault; penalties

(a) * * *

* * * * *

[(g) The Attorney General of the United States, in his discretion is authorized to pay an amount not to exceed \$100,000 for information and services concerning a violation of subsection (a)(1). Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.]

* * * * *

CHAPTER 95—RACKETEERING

* * * * *

§ 1956. Laundering of monetary instruments

(a) * * *

* * * * *

(c) As used in this section—

(1) * * *

* * * * *

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) kidnapping, robbery, [or extortion;] *extortion, murder, or destruction of property by means of explosive or fire; or*

* * * * *

(D) an offense under *section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to Congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to protection of officers and employees of the United States), section 1116 (relating to*

murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), or section 2319 (relating to copyright infringement) [of this title] section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than \$5,000, or any felony violation of the Foreign Corrupt Practices Act; or

* * * * *

CHAPTER 111—SHIPPING

* * * * *

§ 2280. Violence against maritime navigation

(a) OFFENSES.—

(1) IN GENERAL.—A person who unlawfully and intentionally—

(A) * * *

* * * * *

(H) attempts *or conspires* to do any act prohibited under subparagraphs (A) through (G), shall be fined under this title, imprisoned not more than 20 years, or both; and if the death of any person results from conduct prohibited by this paragraph, shall be punished by death or imprisoned for any term of years or for life.

(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a)—

- (1) in the case of a covered ship, if—
- (A) such activity is committed—
- (i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;
- (ii) in the United States [and the activity is not prohibited as a crime by the State in which the activity takes place]; or
- (iii) [the activity takes place on a ship flying the flag of a foreign country or outside the United States,] by a national of the United States or by a stateless person whose habitual residence is in the United States;

* * * * *

§ 2281. Violence against maritime fixed platforms

(a) OFFENSES.—

(1) IN GENERAL.—A person who unlawfully and intentionally—

(A) * * *

* * * * *

(F) attempts *or conspires* to do anything prohibited under subparagraphs (A) through (E), shall be fined under this title, imprisoned not more than 20 years, or both; and if death results to any person from conduct prohibited by this paragraph, shall be punished by death or imprisoned for any term of years or for life.

* * * * *

CHAPTER 113B—TERRORISM

Sec.

2331. Definitions.

2332. Criminal penalties.

* * * * *

2332b. *Acts of terrorism transcending national boundaries.*

* * * * *

2339B. *Providing material support to terrorist organizations.*

§ 2331. Definitions

As used in this chapter—

[(1) the term “international terrorism” means activities that—

[(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

[(B) appear to be intended—

[(i) to intimidate or coerce a civilian population;

[(ii) to influence the policy of a government by intimidation or coercion; or

[(iii) to affect the conduct of a government by assassination or kidnapping; and

[(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;]

(1) the term “terrorism” means terrorist activity as defined in section 212(a)(3)(B)(ii) of the Immigration and Nationality Act;

(2) the term “international terrorism” means terrorism that occurs primarily outside the territorial jurisdiction of the United States, or transcends national boundaries in terms of the means by which it is accomplished, the persons it appears intended to intimidate or coerce, or the locale in which its perpetrators operate or seek asylum;

[(2)] (3) the term “national of the United States” has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

[(3)] (4) the term “person” means any individual or entity capable of holding a legal or beneficial interest in property; and

[(4)] (5) the term “act of war” means any act occurring in the course of—

(A) declared war;

(B) armed conflict, whether or not war has been declared, between two or more nations; or

(C) armed conflict between military forces of any origin.

* * * * *

§ 2332a. Use of weapons of mass destruction

(a) *OFFENSE AGAINST A NATIONAL OR WITHIN THE UNITED STATES.*—A person who, *without lawful authority* uses, or *threatens*, attempts or conspires to use, a weapon of mass destruction—

(1) against a national of the United States while such national is outside of the United States;

(2) against any person within the United States *and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce*; or

* * * * *

(b) *OFFENSE BY NATIONAL OUTSIDE THE UNITED STATES.*—Any national of the United States who, *without lawful authority and outside the United States*, uses, or *threatens*, attempts, or conspires to use, a weapon of mass destruction shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.

[(b)] (c) *DEFINITIONS.*—For purposes of this section—

(1) the term “national of the United States” has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(2) the term “weapon of mass destruction” means—

(A) any destructive device as defined in section 921 of this title;

[(B) poison gas;]

(B) any weapon that is designed to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(C) any weapon involving a disease organism; or

(D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

* * * * *

§2332b. Acts of terrorism transcending national boundaries

(a) *PROHIBITED ACTS.*—

(1) *Whoever, involving any conduct transcending national boundaries and in a circumstance described in subsection (b)—*

(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any individual within the United States; or

(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States;

in violation of the laws of any State or the United States shall be punished as prescribed in subsection (c).

(2) Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished as prescribed in subsection (c).

(b) *JURISDICTIONAL BASES.*—*The circumstances referred to in subsection (a) are—*

(1) any of the offenders travels in, or uses the mail or any facility of, interstate or foreign commerce in furtherance of the offense or to escape apprehension after the commission of the offense;

(2) the offense obstructs, delays, or affects interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated;

(3) the victim, or intended victim, is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;

(4) the structure, conveyance, or other real or personal property is, in whole or in part, owned, possessed, used by, or leased to the United States, or any department or agency thereof;

(5) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

(6) the offense is committed in those places within the United States that are in the special maritime and territorial jurisdiction of the United States.

Jurisdiction shall exist over all principals and co-conspirators of an offense under this section, and accessories after the fact to any of

fense under this section, if at least one of such circumstances is applicable to at least one offender.

(c) *PENALTIES.*—

(1) *Whoever violates this section shall be punished—*

(A) *for a killing or if death results to any person from any other conduct prohibited by this section by death, or by imprisonment for any term of years or for life;*

(B) *for kidnapping, by imprisonment for any term of years or for life;*

(C) *for maiming, by imprisonment for not more than 35 years;*

(D) *for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years;*

(E) *for destroying or damaging any structure, conveyance, or other real or personal property, by imprisonment for not more than 25 years;*

(F) *for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and*

(G) *for threatening to commit an offense under this section, by imprisonment for not more than 10 years.*

(2) *Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.*

(d) *LIMITATION ON PROSECUTION.*—*No indictment shall be sought nor any information filed for any offense described in this section until the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, makes a written certification that, in the judgment of the certifying official, such offense, or any activity preparatory to or meant to conceal its commission, is terrorism, as defined in section 2331 of this title.*

(e) *PROOF REQUIREMENTS.*—

(1) *The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.*

(2) *In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.*

(f) *EXTRATERRITORIAL JURISDICTION.*—*There is extraterritorial Federal jurisdiction—*

(1) *over any offense under subsection (a), including any threat, attempt, or conspiracy to commit such offense; and*

(2) *over conduct which, under section 3 of this title, renders any person an accessory after the fact to an offense under subsection (a).*

(g) *DEFINITIONS.*—*As used in this section—*

(1) *the term “conduct transcending national boundaries” means conduct occurring outside the United States in addition to the conduct occurring in the United States;*

- (2) the term “facility of interstate or foreign commerce” has the meaning given that term in section 1958(b)(2) of this title;
- (3) the term “serious bodily injury” has the meaning prescribed in section 1365(g)(3) of this title; and
- (4) the term “territorial sea of the United States” means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

* * * * *

§ 2339A. Providing material support to terrorists

[(a) DEFINITION.—In this section, “material support or resources” means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, but does not include humanitarian assistance to persons not directly involved in such violations.]

[(b) OFFENSE.—A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 36, 351, 844 (f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2331, or 2339 of this title or section 46502 of title 49, or in preparation for or carrying out the concealment of an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.]

[(c) INVESTIGATIONS.—

[(1) IN GENERAL.—Within the United States, an investigation may be initiated or continued under this section only when facts reasonably indicate that—

[(A) in the case of an individual, the individual knowingly or intentionally engages, has engaged, or is about to engage in the violation of this or any other Federal criminal law; and

[(B) in the case of a group of individuals, the group knowingly or intentionally engages, has engaged, or is about to engage in the violation of this or any other Federal criminal law.]

[(2) ACTIVITIES PROTECTED BY THE FIRST AMENDMENT.—An investigation may not be initiated or continued under this section based on activities protected by the First Amendment to the Constitution, including expressions of support or the provision of financial support for the nonviolent political, religious, philosophical, or ideological goals or beliefs of any person or group.]

§ 2339A. Providing material support to terrorists

(a) OFFENSE.—Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for or in carry-

ing out, a violation of section 32, 37, 351, 844 (f) or (i), 956, 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, 2332a, or 2332b of this title or section 46502 of title 49, or in preparation for or in carrying out the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than ten years, or both.

(b) *DEFINITION.*—In this section, the term “material support or resources” means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

§2339B. Providing material support to terrorist organizations

(a) *OFFENSE.*—Whoever, within the United States, knowingly provides material support or resources in or affecting interstate or foreign commerce, to any organization which the person knows or should have known is a terrorist organization and that has been designated under section 212(a)(3)(B)(iv) of the Immigration and Nationality Act as a terrorist organization shall be fined under this title or imprisoned not more than 10 years, or both.

(b) *DEFINITION.*—As used in this section, the term “material support or resources” has the meaning given that term in section 2339A of this title.

* * * * *

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

* * * * *

§2510. Definitions

As used in this chapter—

(1) * * *

* * * * *

(12) “electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device; **[or]**

(C) any communication from a tracking device (as defined in section 3117 of this title); *or*

(D) information stored in a communications system used for the electronic storage and transfer of funds;

* * * * *

(16) “readily accessible to the general public” means, with respect to a radio communication, that such communication is not—

(A) * * *

* * * * *

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; *or*

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio; **[or**

[(F) an electronic communication;]

(17) “electronic storage” means—

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; **[and]**

(18) “aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception~~[,]~~; *and*

(19) “domestic terrorism” means terrorism, as defined in section 2331 of this title, that occurs primarily inside the territorial jurisdiction of the United States.

* * * * *

§2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter. *This section shall not apply to the disclosure by the United States in a criminal trial or hearing or before a grand jury of the contents of a wire or oral communication, or evidence derived therefrom, if any law enforcement officers who intercepted the communication or gathered the evidence derived therefrom acted with the reasonably objective belief that their actions were in compliance with this chapter.*

§2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction

for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * *

(n) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms); **[and]**

(o) any violation of section 956 or section 960 (relating to certain actions against foreign nations), section 1114 (relating to protection of officers and employees of the United States), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 2332 (relating to terrorist acts abroad), section 2332a (relating to weapons of mass destruction), section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists), section 37 (relating to violence at international airports) of title 18, United States Code, or;

(p) any felony violation of section 842 (relating to explosives) of this title; and

[(o)] *(q) any conspiracy to commit any offense described in any subparagraph of this paragraph.*

* * * * *

§ 2518. Procedure for interception of wire, oral, or electronic communications

(1) * * *

* * * * *

[(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.]

(6) Whenever an order authorizing interception is entered under this chapter, the order shall require the attorney for the Government to file a report with the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such report shall be made 15 days after the interception has begun. No other reports shall be made to the judge under this subsection.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists that involves—

- (i) immediate danger of death or serious physical injury to any person,
 - (ii) conspiratorial activities threatening the national security interest, **[or]**
 - (iii) conspiratorial activities involving domestic terrorism or international terrorism (as that term is defined in section 2331 of this title), or*
 - [(iii)]** (iv) conspiratorial activities characteristic of organized crime,
- that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

* * * * *

[(11)] The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

[(a)] in the case of an application with respect to the interception of an oral communication—

[(i)] the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

[(ii)] the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

[(iii)] the judge finds that such specification is not practical; and

[(b)] in the case of an application with respect to a wire or electronic communication—

[(i)] the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

[(ii)] the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

[(iii)] the judge finds that such purpose has been adequately shown. **]**

(11) The requirements of subsections (1)(b)(11) and (3)(d) of this section relating to the specification of facilities from which or the place where the communication is to be intercepted to do not apply if, in the case of an application with respect to the interception of oral, wire, or electronic communications—

(a) the application is by a Federal investigative or law enforcement officer, and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General (or an official acting in any such capacity);

(b) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(c) the judge finds that such specification is not practical.

* * * * *

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

* * * * *

§ 2703. Requirements for governmental access

(a) * * *

* * * * *

(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) * * *

* * * * *

(C) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the name, address, *local and long distance* telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under subparagraph (B).

* * * * *

(f) REQUIREMENT TO PRESERVE EVIDENCE.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records, and other evidence in its possession pending the issuance of a court order or other process. Such records shall be retained for a period of 90 days, which period shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

* * * * *

§ 2707. Civil action

(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or [customer] *any other person* aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

* * * * *

(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the vio-

lation, but in no case shall a person entitled to recover receive less than the sum of \$1,000, *and if the violation is willful or intentional, such punitive damages as the court may allow, and, in the case of any successful action to enforce liability under this section, the costs of the action, together with reasonable attorney fees, as determined by the court.*

* * * * *

(f) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a court determines that any agency or department of the United States has violated this chapter and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

* * * * *

§ 2709. Counterintelligence access to telephone toll and transactional records

(a) * * *

(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

(A) the name, address, length of service, and *local and long distance* toll billing records sought are relevant to an authorized foreign counterintelligence investigation; [and]

(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence

Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States[.]; and

(3) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director or the Director's designee (in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized domestic terrorism investigation.

* * * * *

CHAPTER 122—ACCESS TO CERTAIN RECORDS

Sec.

2720. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in counterintelligence and counterterrorism cases.

§2720. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in counterintelligence and counterterrorism cases

(a)(1) A court or magistrate judge may issue an order *ex parte*, upon application by the Director of the Federal Bureau of Investigation (or the Director's designee, whose rank shall be no lower than Assistant Special Agent in Charge), directing any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to furnish any records in its possession to the Federal Bureau of Investigation. The court or magistrate judge shall issue the order if the court or magistrate judge finds that—

(A) such records are necessary for counterterrorism or foreign counterintelligence purposes; and

(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is—

(i) a foreign power; or

(ii) an agent of a foreign power and is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

(b) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or any officer, employee, or agent of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, shall disclose to any person, other than those officers, agents, or employees of the common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose the information to the Federal Bureau of Investigation under this section.

(c)(1) *The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside the Federal Bureau of Investigation, except—*

(A) to the Department of Justice or any other law enforcement agency, as may be necessary for the approval or conduct of a foreign counterintelligence investigation; or

(B) where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

(2) *Any agency or department of the United States obtaining or disclosing any information in violation of this paragraph shall be liable to any person harmed by the violation in an amount equal to the sum of—*

(A) \$100 without regard to the volume of information involved;

(B) any actual damages sustained by the person harmed as a result of the violation;

(C) if the violation is willful or intentional, such punitive damages as a court may allow; and

(D) in the case of any successful action to enforce liability under this paragraph, the costs of the action, together with reasonable attorney fees, as determined by the court.

(d) *If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.*

(e) *As used in this section—*

(1) the term “common carrier” means a locomotive, rail carrier, bus carrying passengers, water common carrier, air common carrier, or private commercial interstate carrier for the delivery of packages and other objects;

(2) the term “public accommodation facility” means any inn, hotel, motel, or other establishment that provides lodging to transient guests;

(3) the term “physical storage facility” means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof; and

(4) the term “vehicle rental facility” means any person or entity that provides vehicles for rent, lease, loan, or other similar use, to the public or any segment thereof.

* * * * *

PART II—CRIMINAL PROCEDURE

* * * * *

CHAPTER 203—ARREST AND COMMITMENT

Sec.

3041. Power of courts and magistrates.

* * * * *

3059. Rewards and appropriations therefor.

3059A. Special rewards for information relating to certain financial institution offenses.]

3059. *Reward authority of the Attorney General.*

* * * * *

§ 3059. Rewards and appropriations therefor

[(a)(1) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$25,000 as a reward or rewards for the capture of anyone who is charged with violation of criminal laws of the United States or any State or of the District of Columbia, and an equal amount as a reward or rewards for information leading to the arrest of any such person, to be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Attorney General of the United States. Not more than \$25,000 shall be expended for information or capture of any one person.

[(2) If any of the said persons shall be killed in resisting lawful arrest, the Attorney General may pay any part of the reward money in his discretion to the person or persons whom he shall adjudge to be entitled thereto but no reward money shall be paid to any official or employee of the Department of Justice of the United States.

[(b) The Attorney General each year may spend not more than \$10,000 for services or information looking toward the apprehension of narcotic law violators who are fugitives from justice.

[(c)(1) In special circumstances and in the Attorney General's sole discretion, the Attorney General may make a payment of up to \$10,000 to a person who furnishes information unknown to the Government relating to a possible prosecution under section 2326 which results in a conviction.

[(2) A person is not eligible for a payment under paragraph (1) if—

[(A) the person is a current or former officer or employee of a Federal, State, or local government agency or instrumentality who furnishes information discovered or gathered in the course of government employment;

[(B) the person knowingly participated in the offense;

[(C) the information furnished by the person consists of an allegation or transaction that has been disclosed to the public—

[(i) in a criminal, civil, or administrative proceeding;

[(ii) in a congressional, administrative, or General Accounting Office report, hearing, audit, or investigation; or

[(iii) by the news media, unless the person is the original source of the information; or

[(D) when, in the judgment of the Attorney General, it appears that a person whose illegal activities are being prosecuted or investigated could benefit from the award.

[(3) For the purposes of paragraph (2)(C)(iii), the term “original source” means a person who has direct and independent knowledge of the information that is furnished and has voluntarily provided the information to the Government prior to disclosure by the news media.

[(4) Neither the failure of the Attorney General to authorize a payment under paragraph (1) nor the amount authorized shall be subject to judicial review.

[§ 3059A. Special rewards for information relating to certain financial institution offenses

[(a)(1) In special circumstances and in the Attorney General's sole discretion, the Attorney General may make payments to persons who furnish information unknown to the Government relating to a possible prosecution under section 215, 225, 287, 656, 657, 1001, 1005, 1006, 1007, 1014, 1032, 1341, 1343, 1344, or 1517 of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States, or to a possible prosecution for conspiracy to commit such an offense.

[(2) The amount of a payment under paragraph (1) shall not exceed \$50,000 and shall be paid from the Financial Institution Information Award Fund established under section 2569 of the Financial Institutions Anti-Fraud Enforcement Act of 1990.

[(b) A person is not eligible for a payment under subsection (a) if—

[(1) the person is a current or former officer or employee of a Federal or State government agency or instrumentality who furnishes information discovered or gathered in the course of his government employment;

[(2) the furnished information consists of allegations or transactions that have been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or General Accounting Office report, hearing, audit or investigation, from any other government source, or from the news media unless the person is the original source of the information;

[(3) the person is an institution-affiliated party (as defined in section 3(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(u)) which withheld information during the course of any bank examination or investigation authorized pursuant to section 10 of such Act (12 U.S.C. 1820) who such party owed a fiduciary duty to disclose;

[(4) the person is a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

[(5) the person knowingly participated in the violation of the section with respect to which the payment would be made.

[(c) For the purposes of subsection (b)(2), the term “original source” means a person who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government prior to the disclosure.

[(d) Neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

[(e)(1) A person who—

[(A) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the person on behalf of the person or others in furtherance of a prosecution under any of the sections referred to in subsection (a) (including provision of information relating to, investigation for, initiation of, testimony for, or assistance in such a prosecution); and

[(B) was not a knowing participant in the unlawful activity that is the subject of such a prosecution,
may, in a civil action, obtain all relief necessary to make the person whole.

[(2) Relief under paragraph (1) shall include—

[(A)(i) reinstatement with the same seniority status;

[(ii) 2 times the amount of back pay plus interest; and

[(iii) interest on the backpay,

that the plaintiff would have had but for the discrimination; and

[(B) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.]

§ 3059. Reward authority of the Attorney General

(a) *The Attorney General may pay rewards and receive from any department or agency, funds for the payment of rewards under this section, to any individual who provides any information unknown to the Government leading to the arrest or prosecution of any individual for Federal felony offenses.*

(b) *If the reward exceeds \$100,000, the Attorney General shall give notice of that fact to the Senate and the House of Representatives not later than 30 days after authorizing the payment of the reward.*

(c) *A determination made by the Attorney General as to whether to authorize an award under this section and as to the amount of any reward authorized shall be final and conclusive, and no court shall have jurisdiction to review it.*

(d) *If the Attorney General determines that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Attorney General may take such measures in connection with the payment of the reward as the Attorney General deems necessary to effect such protection.*

(e) *No officer or employee of any governmental entity may receive a reward under this section for conduct in performance of his or her official duties.*

(f) *Any individual (and the immediate family of such individual) who furnishes information which would justify a reward under this section or a reward by the Secretary of State under section 36 of the State Department Basic Authorities Act of 1956 may, in the discre-*

tion of the Attorney General, participate in the Attorney General's witness security program under chapter 224 of this title.

* * * * *

CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

* * * * *

§ 3122. Application for an order for a pen register or a trap and trace device

(a) * * *

(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal *or foreign counterintelligence* investigation being conducted by that agency.

§ 3123. Issuance of an order for a pen register or a trap and trace device

(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal *or foreign counterintelligence* investigation.

(b) CONTENTS OF ORDER.—An order issued under this section—

(1) shall specify—

(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

(B) the identity, if known, of the person who is the subject of the [criminal] investigation;

* * * * *

CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

* * * * *

§ 3142. Release or detention of a defendant pending trial

(a) * * *

* * * * *

(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appear-

ance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(1) * * *

* * * * *

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), or an offense under section 924(c), 956(a), or 2332b of title 18 of the United States Code.

(f) DETENTION HEARING.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) * * *

* * * * *

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (*not including any intermediate Saturday, Sunday, or legal holiday*), and a continuance on motion of the attorney for the Government may not exceed three days (*not including any intermediate Saturday, Sunday, or legal holiday*). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial

if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

* * * * *

CHAPTER 213—LIMITATIONS

Sec.

3281. Capital offenses.

* * * * *

3295. Arson offenses.

* * * * *

§ 3286. Extension of statute of limitation for certain terrorism offenses

Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for **[any offense]** *any non-capital offense* involving a violation of section 32 (aircraft destruction), section **[36]** 37 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section **[2331]** 2332 (terrorist acts abroad against United States nationals), section **[2339]** 2332a (use of weapons of mass destruction), 2332b (*acts of terrorism transcending national boundaries*), or section 2340A (torture) of this title or section 46502, 46504, 46505, or 46506 of title 49, unless the indictment is found or the information is instituted within 8 years after the offense was committed.

* * * * *

§ 3295. Arson offenses

No person shall be prosecuted, tried, or punished for any non-capital offense under section 81 or subsection (f), (h), or (i) of section 844 of this title unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.

* * * * *

SECTION 46502 OF TITLE 49, UNITED STATES CODE

§ 46502. Aircraft piracy

(a) IN SPECIAL AIRCRAFT JURISDICTION.—(1) * * *

(2) An individual committing or attempting *or conspiring* to commit aircraft piracy—

(A) shall be imprisoned for at least 20 years; or

(B) *notwithstanding section 3559(b) of title 18, if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.*

(b) *OUTSIDE SPECIAL AIRCRAFT JURISDICTION.*—(1) An individual committing or conspiring to commit an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) on an aircraft in flight outside the special aircraft jurisdiction of the United States [and later found in the United States]—

(A) shall be imprisoned for at least 20 years; or

(B) notwithstanding section 3559(b) of title 18, if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.

[(2) This subsection applies only if the place of takeoff or landing of the aircraft on which the individual commits the offense is located outside the territory of the country of registration of the aircraft.]

(2) There is jurisdiction over the offense in paragraph (1) if—

(A) a national of the United States was aboard the aircraft;

(B) an offender is a national of the United States; or

(C) an offender is afterwards found in the United States.

(3) For purposes of this subsection, the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

FAIR CREDIT REPORTING ACT

TITLE VI—CONSUMER CREDIT REPORTING

Sec.

601. Short title.

624. Disclosures to the Federal Bureau of Investigation for foreign counterintelligence purposes.

SEC. 624. DISCLOSURES TO THE FEDERAL BUREAU OF INVESTIGATION FOR FOREIGN COUNTERINTELLIGENCE PURPOSES.

(a) *IDENTITY OF FINANCIAL INSTITUTIONS.*—(1) Notwithstanding section 604 or any other provision of this title, a court or magistrate judge may issue an order ex parte, upon application by the Director of the Federal Bureau of Investigation (or the Director’s designee, whose rank shall be no lower than Assistant Special Agent in Charge), directing a consumer reporting agency to furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency. The court or magistrate judge shall issue the order if the court or magistrate judge finds, that—

(A) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that the consumer—

(i) is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978) or a person who is not a United States person (as defined in such section 101) and is an official of a foreign power; or

(ii) is an agent of a foreign power and is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

(b) IDENTIFYING INFORMATION.—(1) Notwithstanding section 604 or any other provision of this title, a court or magistrate judge shall issue an order ex parte, upon application by the Director of the Federal Bureau of Investigation (or the Director's designee, whose rank shall be no lower than Assistant Special Agent in Charge), directing a consumer reporting agency to furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation. The court or magistrate judge shall issue the order if the court or magistrate judge finds, that—

(A) such information is necessary to the conduct of an authorized foreign counterintelligence investigation; and

(B) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978).

(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

(c) COURT ORDER FOR DISCLOSURE OF CONSUMER REPORTS.—(1) Notwithstanding section 604 or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation (or the Director's designee, whose rank shall be no lower than Assistant Special Agent in Charge), a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, after the court or magistrate finds, in a proceeding in camera, that—

(A) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—

(i) is an agent of a foreign power; and

(ii) is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

(d) CONFIDENTIALITY.—(1) No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c).

(2) No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

(e) *PAYMENT OF FEES.*—The Federal Bureau of Investigation is authorized, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing reports or information in accordance with procedures established under this section, a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

(f) *LIMIT ON DISSEMINATION.*—The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except—

(1) to the Department of Justice or any other law enforcement agency, as may be necessary for the approval or conduct of a foreign counterintelligence investigation; or

(2) where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

(g) *RULES OF CONSTRUCTION.*—Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, or in connection with a judicial or administrative proceeding to enforce the provisions of this Act. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

(h) *REPORTS TO CONGRESS.*—On an annual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking and Financial Services of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

(i) *DAMAGES.*—Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to any person harmed by the violation in an amount equal to the sum of—

(1) \$100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the person harmed as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

(j) *DISCIPLINARY ACTIONS FOR VIOLATIONS.*—If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances

surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

(k) *GOOD-FAITH EXCEPTION.*—Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State notwithstanding.

(l) *INJUNCTIVE RELIEF.*—In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.

IMMIGRATION AND NATIONALITY ACT

* * * * *

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TITLE I—GENERAL

* * * * *

[JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION]

JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION, AND SPECIAL EXCLUSION

SEC. 106. (a) The procedure prescribed by, and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against

aliens within the United States pursuant to administrative proceedings under section 242(b) or pursuant to section 242A of this Act or comparable provisions of any prior Act, except that—

(1) * * *

* * * * *

(8) nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 242 of this Act. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to subsection (c) of section 242 of this Act at any time after the issuance of a deportation order; *and*

(9) it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs[; and].

[(10) any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.]

(b) Notwithstanding the provisions of any other law, any alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 236 of this Act or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise. *Jurisdiction to review an order entered pursuant to the provisions of section 235(c) concerning an alien excludable under section 212(a)(3)(B) shall rest exclusively in the United States Court of Appeals for the District of Columbia Circuit.*

* * * * *

(e)(1) *Notwithstanding any other provision of law, and except as provided in this subsection, no court shall have jurisdiction to review any individual determination, or to entertain any other cause or claim, arising from or relating to the implementation or operation of section 235(b)(1). Regardless of the nature of the action or claim, or the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or other equitable relief not specifically authorized in this subsection nor to certify a class under Rule 23 of the Federal Rules of Civil Procedure.*

(2) *Judicial review of any cause, claim, or individual determination covered under paragraph (1) shall only be available in habeas corpus proceedings, and shall be limited to determinations of—*

(A) *whether the petitioner is an alien, if the petitioner makes a showing that the petitioner's claim of United States nationality is not frivolous;*

(B) *whether the petitioner was ordered specially excluded under section 235(b)(1)(A); and*

(C) *whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence and is entitled to such review as is pro-*

vided by the Attorney General pursuant to section 235(b)(1)(E)(i).

(3) In any case where the court determines that an alien was not ordered specially excluded, or was not properly subject to special exclusion under the regulations adopted by the Attorney General, the court may order no relief beyond requiring that the alien receive a hearing in accordance with section 236, or a determination in accordance with section 235(c) or 273(d).

(4) In determining whether an alien has been ordered specially excluded, the court's inquiry shall be limited to whether such an order was in fact issued and whether it relates to the petitioner.

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

* * * * *

ASYLUM PROCEDURE

SEC. 208. (a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A). *The Attorney General may not grant an alien asylum if the Attorney General determines that the alien is excludable under subclause (I), (II), or (III) of section 212(a)(3)(B)(i) or deportable under section 241(a)(4)(B).*

* * * * *

SPECIAL AGRICULTURAL WORKERS

SEC. 210. (a) * * *

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) * * *

* * * * *

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien, *except as allowed by a court order issued pursuant to paragraph (6).*

(6) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application including a determination under subparagraph (a)(3)(B), or for enforcement of paragraph (7).

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Notwithstanding the previous sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used (i) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or (ii) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the special agricultural worker application was filed and such activity involves terrorist activity or poses either an immediate risk to life or to national security, or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant. Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

* * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF EXCLUDABLE ALIENS.—Except as otherwise provided in this Act, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:

(1) * * *

* * * * *

(3) SECURITY AND RELATED GROUNDS.—

(A) * * *

(B) TERRORIST ACTIVITIES.—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity, [or]

(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, *engaged in* or is likely to engage after entry in any terrorist activity (as defined in clause (iii)),

(III) *is a representative of a terrorist organization, or*

(IV) *is a member of a terrorist organization which the alien knows or should have known is a terrorist organization,*

is excludable. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation

Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

* * * * *

(iv) *TERRORIST ORGANIZATION DEFINED.*—

(I) *DESIGNATION.*—For purposes of this Act, the term “terrorist organization” means a foreign organization designated in the Federal Register as a terrorist organization by the Secretary of State, in consultation with the Attorney General, based upon a finding that the organization engages in, or has engaged in, terrorist activity that threatens the national security of the United States.

(II) *PROCESS.*—At least 3 days before designating an organization as a terrorist organization through publication in the Federal Register, the Secretary of State, in consultation with the Attorney General, shall notify the Committees on the Judiciary of the House of Representatives and the Senate of the intent to make such designation and the findings and basis for designation. The Secretary of State, in consultation with the Attorney General, shall create an administrative record and may use classified information in making such a designation. Such information is not subject to disclosure so long as it remains classified, except that it may be disclosed to a court *ex parte* and *in camera* under subclause (III) for purposes of judicial review of such a designation. The Secretary of State, in consultation with the Attorney General, shall provide notice and an opportunity for public comment prior to the creation of the administrative record under this subclause.

(III) *JUDICIAL REVIEW.*—Any organization designated as a terrorist organization under the preceding provisions of this clause may, not later than 30 days after the date of the designation, seek judicial review thereof in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based solely upon the administrative record, except that the Government may submit, for *ex parte* and *in camera* review, classified information considered in making the designation. The court shall hold unlawful and set aside the designation if the court finds the designation to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under the previous sentence, contrary to constitutional right, power, privilege, or immunity, or not in accord with the procedures required by law.

(IV) *CONGRESSIONAL AUTHORITY TO REMOVE DESIGNATION.*—The Congress reserves the author-

ity to remove, by law, the designation of an organization as a terrorist organization for purposes of this Act.

(V) SUNSET.—Subject to subclause (IV), the designation under this clause of an organization as a terrorist organization shall be effective for a period of 2 years from the date of the initial publication of the terrorist organization designation by the Secretary of State. At the end of such period (but no sooner than 60 days prior to the termination of the 2-year-designation period), the Secretary of State, in consultation with the Attorney General, may redesignate the organization in conformity with the requirements of this clause for designation of the organization.

(VI) OTHER AUTHORITY TO REMOVE DESIGNATION.—The Secretary of State, in consultation with the Attorney General, may remove the terrorist organization designation from any organization previously designated as such an organization, at any time, so long as the Secretary publishes notice of the removal in the Federal Register. The Secretary is not required to report to Congress prior to so removing such designation.

(v) REPRESENTATIVE DEFINED.—In this subparagraph, the term “representative” includes an officer, official, or spokesman of the organization and any person who directs, counsels, commands or induces the organization or its members to engage in terrorist activity. The determination by the Secretary of State or the Attorney General that an alien is a representative of a terrorist organization shall be subject to judicial review.

(b) NOTICES OF DENIALS.—**[If]** *(1) Subject to paragraph (2), if an alien’s application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be excludable under subsection (a), the officer shall provide the alien with a timely written notice that—*

[(1)] *(A) states the determination, and*

[(2)] *(B) lists the specific provision or provisions of law under which the alien is excludable or ineligible for entry or adjustment of status.*

(2) With respect to applications for visas, the Secretary of State may waive the application of paragraph (1) in the case of a particular alien or any class or classes of aliens excludable under subsection (a)(2) or (a)(3).

* * * * *

CHAPTER 4—PROVISIONS RELATING TO ENTRY AND EXCLUSION

* * * * *

INSPECTION BY IMMIGRATION OFFICERS

SEC. 235. (a) * * *

[(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer for further inquiry.]

(b)(1)(A) If the examining immigration officer determines that an alien seeking entry—

(i) is excludable under section 212(a)(6)(C) or 212(a)(7), and

(ii) does not indicate either an intention to apply for asylum under section 208 or a fear of persecution,

the officer shall order the alien excluded from the United States without further hearing or review.

(B) The examining immigration officer shall refer for an interview by an asylum officer under subparagraph (C) any alien who is excludable under section 212(a)(6)(C) or 212(a)(7) and has indicated an intention to apply for asylum under section 208 or a fear of persecution.

(C)(i) An asylum officer shall promptly conduct interviews of aliens referred under subparagraph (B).

(ii) If the officer determines at the time of the interview that an alien has a credible fear of persecution (as defined in clause (v)), the alien shall be detained for an asylum hearing before an asylum officer under section 208.

(iii)(I) Subject to subclause (II), if the officer determines that the alien does not have a credible fear of persecution, the officer shall order the alien excluded from the United States without further hearing or review.

(II) The Attorney General shall promulgate regulations to provide for the immediate review by a supervisory asylum office at the port of entry of a determination under subclause (I).

(iv) The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not delay the process.

(v) For purposes of this subparagraph, the term "credible fear of persecution" means (I) that it is more probable than not that the statements made by the alien in support of the alien's claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

(D) As used in this paragraph, the term "asylum officer" means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques; and

(ii) is supervised by an officer who meets the condition in clause (i).

(E)(i) An exclusion order entered in accordance with subparagraph (A) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence.

(ii) In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of exclusion entered under subparagraph (A).

(2)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

(B) The provisions of subparagraph (A) shall not apply—

(i) to an alien crewman,

(ii) to an alien described in paragraph (1)(A) or (1)(C)(iii)(I),

or

(iii) if the conditions described in section 273(d) exist.

(3) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.

* * * * *

(d) In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 275 or section 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 236 and 242.

* * * * *

IMMEDIATE DEPORTATION OF ALIENS EXCLUDED FROM ADMISSION OR ENTERING IN VIOLATION OF LAW

SEC. 237. (a)(1) Any alien (other than an alien crewman) arriving in the United States who is excluded under this Act, shall be immediately deported, in accommodations of the same class in which he arrived, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. **[Deportation]** Subject to section 235(b)(1), deportation shall be to the country in which the alien boarded the vessel or aircraft on which he arrived in the United States, unless the alien boarded such vessel or aircraft in foreign territory contiguous to the United States or in any island adjacent thereto or adjacent to the United States and the alien is not a native, citizen, subject, or national of, or does not have a residence in, such foreign contiguous territory or adjacent island, in which case the deportation

shall instead be to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained, shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except that the cost of maintenance (including detention expenses and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed against the owner or owners of such vessel or aircraft if (A) the alien was in possession of a valid, unexpired immigrant visa, or (B) the alien (other than an alien crewman) was in possession of a valid, unexpired non-immigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (i) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (ii) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessel or aircraft established to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (C) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority.

(2) **[If]** *Subject to section 235(b)(1), if the government of the country designated in paragraph (1) will not accept the alien into its territory, the alien's deportation shall be directed by the Attorney General, in his discretion and without necessarily giving any priority or preference because of their order as herein set forth, either to—*

(A) * * *

* * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. (a) * * *

* * * * *

(d) Notwithstanding any other provision of this title, an alien found in the United States who has not been admitted to the United States after inspection in accordance with section 235 is deemed for purposes of this Act to be seeking entry and admission to the United States and shall be subject to examination and exclusion by the Attorney General under chapter 4. In the case of such an alien the Attorney General shall provide by regulation an opportunity for the alien to establish that the alien was so admitted.

* * * * *

COUNTRIES TO WHICH ALIENS SHALL BE DEPORTED; COST OF
DEPORTATION

SEC. 243. (a) * * *

* * * * *

(h)(1) * * *

(2) Paragraph (1) shall not apply to any alien if the Attorney General determines that—

(A) * * *

* * * * *

For purposes of subparagraph (B), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime. *For purposes of subparagraph (D), an alien who is described in section 241(a)(4)(B) shall be considered to be an alien for whom there are reasonable grounds for regarding as a danger to the security of the United States.*

* * * * *

SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE

SEC. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien (other than an alien described in [section 241(a)(4)(D)] *subparagraph (B) or (D) of section 241(a)(4)*) who applies to the Attorney General for suspension of deportation and—

(1) * * *

* * * * *

(e)(1) * * *

(2) The authority contained in paragraph (1) shall not apply to any alien who is deportable *under section 241(a)(4)(B) or because of a conviction for an aggravated felony.*

* * * * *

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON
ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) * * *

* * * * *

(c) Subsection (a) shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visi-

tor without a visa under section 212(l) or section 217; **[or]** (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S), *or* (6) *an alien who is deportable under section 241(a)(4)(B).*

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

SEC. 245A. (a) * * *

* * * * *

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) * * *

* * * * *

(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6) or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986,

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications; except that the Attorney General (i) may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code and (ii) *may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used—*

(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

(II) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the legalization application was filed and such activity involves terrorist activity or poses either an immediate risk to life or to national security, or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant. Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

* * * * *

RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF
CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JULY
1, 1924 OR JANUARY 1, 1972

SEC. 249. A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a)(3)(E) or under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) * * *

* * * * *

(d) is not ineligible to citizenship *and is not deportable under section 241(a)(4)(B).*

* * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * *

UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

(1) * * *

* * * * *

(6) TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS EMPLOYMENT PRACTICES.—*[For purposes] (A) Except as provided in subparagraph (B), for purposes of paragraph (1), a person's or other entity's request, for purposes of satisfying the requirements of section 274A(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.*

(B) Subparagraph (A) shall not apply to a request made in connection with an individual seeking employment in a company (or division of a company) engaged in the business of providing security services to protect persons, institutions, buildings, or other possible targets of terrorism (as defined in section 2331(1) of title 18, United States Code).

* * * * *

REENTRY OF DEPORTED ALIEN

SEC. 276. (a) * * *

(b) Notwithstanding subsection (a), in the case of any alien described in such subsection—

(1) whose deportation was subsequent to a conviction for commission of three or more misdemeanors involving drugs,

crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both; **[or]**

(2) whose deportation was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both~~[[.]]~~; or

(3) *who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or who has been removed from the United States pursuant to the provisions of title V, and who thereafter, without the permission of the Attorney General, enters the United States or attempts to do so shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.*

For the purposes of this subsection, the term “deportation” includes any agreement in which an alien stipulates to deportation during a criminal trial under either Federal or State law.

* * * * *

TITLE V—SPECIAL REMOVAL PROCEDURES FOR ALIEN TERRORISTS

DEFINITIONS

SEC. 501. In this title:

(1) The term “alien terrorist” means an alien described in section 241(a)(4)(B).

(2) The term “classified information” has the meaning given such term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.).

(3) The term “national security” has the meaning given such term in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App.).

(4) The term “special attorney” means an attorney who is on the panel established under section 502(e).

(5) The term “special removal court” means the court established under section 502(a).

(6) The term “special removal hearing” means a hearing under section 505.

(7) The term “special removal proceeding” means a proceeding under this title.

ESTABLISHMENT OF SPECIAL REMOVAL COURT; PANEL OF ATTORNEYS TO ASSIST WITH CLASSIFIED INFORMATION

SEC. 502. (a) IN GENERAL.—The Chief Justice of the United States shall publicly designate 5 district court judges from 5 of the United States judicial circuits who shall constitute a court which shall have jurisdiction to conduct all special removal proceedings.

(b) TERMS.—Each judge designated under subsection (a) shall serve for a term of 5 years and shall be eligible for redesignation, except that the four associate judges first so designated shall be des-

ignated for terms of one, two, three, and four years so that the term of one judge shall expire each year.

(c) *CHIEF JUDGE.*—The Chief Justice shall publicly designate one of the judges of the special removal court to be the chief judge of the court. The chief judge shall promulgate rules to facilitate the functioning of the court and shall be responsible for assigning the consideration of cases to the various judges.

(d) *EXPEDITIOUS AND CONFIDENTIAL NATURE OF PROCEEDINGS.*—The provisions of section 103(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(c)) shall apply to proceedings under this title in the same manner as they apply to proceedings under such Act.

(e) *ESTABLISHMENT OF PANEL OF SPECIAL ATTORNEYS.*—The special removal court shall provide for the designation of a panel of attorneys each of whom—

(1) has a security clearance which affords the attorney access to classified information, and

(2) has agreed to represent permanent resident aliens with respect to classified information under sections 506 and 507(c)(2)(B) in accordance with (and subject to the penalties under) this title.

APPLICATION FOR INITIATION OF SPECIAL REMOVAL PROCEEDING

SEC. 503. (a) IN GENERAL.—Whenever the Attorney General has classified information that an alien is an alien terrorist, the Attorney General, in the Attorney General's discretion, may seek removal of the alien under this title through the filing with the special removal court of a written application described in subsection (b) that seeks an order authorizing a special removal proceeding under this title. The application shall be submitted in camera and ex parte and shall be filed under seal with the court.

(b) *CONTENTS OF APPLICATION.*—Each application for a special removal proceeding shall include all of the following:

(1) The identity of the Department of Justice attorney making the application.

(2) The approval of the Attorney General or the Deputy Attorney General for the filing of the application based upon a finding by that individual that the application satisfies the criteria and requirements of this title.

(3) The identity of the alien for whom authorization for the special removal proceeding is sought.

(4) A statement of the facts and circumstances relied on by the Department of Justice to establish that—

(A) the alien is an alien terrorist and is physically present in the United States, and

(B) with respect to such alien, adherence to the provisions of title II regarding the deportation of aliens would pose a risk to the national security of the United States.

(5) An oath or affirmation respecting each of the facts and statements described in the previous paragraphs.

(c) *RIGHT TO DISMISS.*—The Department of Justice retains the right to dismiss a removal action under this title at any stage of the proceeding.

CONSIDERATION OF APPLICATION

SEC. 504. (a) IN GENERAL.—In the case of an application under section 503 to the special removal court, a single judge of the court shall be assigned to consider the application. The judge, in accordance with the rules of the court, shall consider the application and may consider other information, including classified information, presented under oath or affirmation. The judge shall consider the application (and any hearing thereof) in camera and ex parte. A verbatim record shall be maintained of any such hearing.

(b) APPROVAL OF ORDER.—The judge shall enter ex parte the order requested in the application if the judge finds, on the basis of such application and such other information (if any), that there is probable cause to believe that—

- (1) the alien who is the subject of the application has been correctly identified and is an alien terrorist, and*
- (2) adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States.*

(c) DENIAL OF ORDER.—If the judge denies the order requested in the application, the judge shall prepare a written statement of the judge's reasons for the denial.

(d) EXCLUSIVE PROVISIONS.—Whenever an order is issued under this section with respect to an alien—

- (1) the alien's rights regarding removal and expulsion shall be governed solely by the provisions of this title, and*
- (2) except as they are specifically referenced, no other provisions of this Act shall be applicable.*

SPECIAL REMOVAL HEARINGS

SEC. 505. (a) IN GENERAL.—In any case in which the application for the order is approved under section 504, a special removal hearing shall be conducted under this section for the purpose of determining whether the alien to whom the order pertains should be removed from the United States on the grounds that the alien is an alien terrorist. Consistent with section 506, the alien shall be given reasonable notice of the nature of the charges against the alien and a general account of the basis for the charges. The alien shall be given notice, reasonable under all the circumstances, of the time and place at which the hearing will be held. The hearing shall be held as expeditiously as possible.

(b) USE OF SAME JUDGE.—The special removal hearing shall be held before the same judge who granted the order pursuant to section 504 unless that judge is deemed unavailable due to illness or disability by the chief judge of the special removal court, or has died, in which case the chief judge shall assign another judge to conduct the special removal hearing. A decision by the chief judge pursuant to the preceding sentence shall not be subject to review by either the alien or the Department of Justice.

(c) RIGHTS IN HEARING.—

- (1) PUBLIC HEARING.*—The special removal hearing shall be open to the public.
- (2) RIGHT OF COUNSEL.*—The alien shall have a right to be present at such hearing and to be represented by counsel. Any

alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent the alien. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18, United States Code. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged.

(3) *INTRODUCTION OF EVIDENCE.*—The alien shall have a right to introduce evidence on the alien's own behalf.

(4) *EXAMINATION OF WITNESSES.*—Except as provided in section 506, the alien shall have a reasonable opportunity to examine the evidence against the alien and to cross-examine any witness.

(5) *RECORD.*—A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept.

(6) *DECISION BASED ON EVIDENCE AT HEARING.*—The decision of the judge in the hearing shall be based only on the evidence introduced at the hearing, including evidence introduced under subsection (e).

(7) *NO RIGHT TO ANCILLARY RELIEF.*—In the hearing, the judge is not authorized to consider or provide for relief from removal based on any of the following:

(A) Asylum under section 208.

(B) Withholding of deportation under section 243(h).

(C) Suspension of deportation under section 244(a) or 244(e).

(D) Adjustment of status under section 245.

(E) Registry under section 249.

(d) *SUBPOENAS.*—

(1) *REQUEST.*—At any time prior to the conclusion of the special removal hearing, either the alien or the Department of Justice may request the judge to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal evidence or the source of evidence which has been introduced, or which the Department of Justice has received permission to introduce, in camera and ex parte pursuant to subsection (e) and section 506, and the Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena.

(2) *PAYMENT FOR ATTENDANCE.*—If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process

and the fees of the witness so subpoenaed to be paid from funds appropriated for the enforcement of title II.

(3) *NATIONWIDE SERVICE.*—A subpoena under this subsection may be served anywhere in the United States.

(4) *WITNESS FEES.*—A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States.

(5) *NO ACCESS TO CLASSIFIED INFORMATION.*—Nothing in this subsection is intended to allow an alien to have access to classified information.

(e) *INTRODUCTION OF CLASSIFIED INFORMATION.*—

(1) *IN GENERAL.*—Classified information that has been summarized pursuant to section 506(b) and classified information for which findings described in section 506(b)(4)(B) have been made and for which no summary is provided shall be introduced (either in writing or through testimony) in camera and ex parte and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary (if any) provided pursuant to such section. Notwithstanding the previous sentence, the Department of Justice may, in its discretion and after coordination with the originating agency, elect to introduce such evidence in open session.

(2) *TREATMENT OF ELECTRONIC SURVEILLANCE INFORMATION.*—

(A) *USE OF ELECTRONIC SURVEILLANCE.*—The Government is authorized to use in a special removal proceeding the fruits of electronic surveillance and unconsented physical searches authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) without regard to subsections (c), (e), (f), (g), and (h) of section 106 of that Act.

(B) *NO DISCOVERY OF ELECTRONIC SURVEILLANCE INFORMATION.*—An alien subject to removal under this title shall have no right of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act of 1978 or otherwise for national security purposes. Nor shall such alien have the right to seek suppression of evidence.

(C) *CERTAIN PROCEDURES NOT APPLICABLE.*—The provisions and requirements of section 3504 of title 18, United States Code, shall not apply to procedures under this title.

(3) *RIGHTS OF UNITED STATES.*—Nothing in this section shall prevent the United States from seeking protective orders and from asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privileges.

(f) *INCLUSION OF CERTAIN EVIDENCE.*—The Federal Rules of Evidence shall not apply to hearings under this section. Evidence introduced at the special removal hearing, either in open session or in camera and ex parte, may, in the discretion of the Department of Justice, include all or part of the information presented under section 504 used to obtain the order for the hearing under this section.

(g) *ARGUMENTS.*—Following the receipt of evidence, the attorneys for the Department of Justice and for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The attorney for the Department of Justice shall open the argument. The attorney for the alien shall be permitted to reply. The attorney for the Department of Justice shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

(h) *BURDEN OF PROOF.*—In the hearing the Department of Justice has the burden of showing by clear and convincing evidence that the alien is subject to removal because the alien is an alien terrorist. If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed and detained pending removal from the United States. If the alien was released pending the special removal hearing, the judge shall order the Attorney General to take the alien into custody.

(i) *WRITTEN ORDER.*—At the time of rendering a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (e) shall not be made available to the alien or the public.

CONSIDERATION OF CLASSIFIED INFORMATION

SEC. 506. (a) CONSIDERATION IN CAMERA AND EX PARTE.—In any case in which the application for the order authorizing the special procedures of this title is approved, the judge who granted the order shall consider each item of classified information the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing and shall order the introduction of such information pursuant to section 505(e) if the judge determines the information to be relevant.

(b) *PREPARATION AND PROVISION OF WRITTEN SUMMARY.*—

(1) *PREPARATION.*—The Department of Justice shall prepare a written summary of such classified information which does not pose a risk to national security.

(2) *CONDITIONS FOR APPROVAL BY JUDGE AND PROVISION TO ALIEN.*—The judge shall approve the summary so long as the judge finds that the summary is sufficient—

(A) to inform the alien of the general nature of the evidence that the alien is an alien terrorist, and

(B) to permit the alien to prepare a defense against deportation.

The Department of Justice shall cause to be delivered to the alien a copy of the summary.

(3) *OPPORTUNITY FOR CORRECTION AND RESUBMITTAL.*—If the judge does not approve the summary, the judge shall provide the Department a reasonable opportunity to correct the deficiencies identified by the court and to submit a revised summary.

(4) *CONDITIONS FOR TERMINATION OF PROCEEDINGS IF SUMMARY NOT APPROVED.*—

(A) *IN GENERAL.*—If, subsequent to the opportunity described in paragraph (3), the judge does not approve the summary, the judge shall terminate the special removal hearing unless the judge makes the findings described in subparagraph (B).

(B) *FINDINGS.*—The findings described in this subparagraph are, with respect to an alien, that—

(i) the continued presence of the alien in the United States, and

(ii) the provision of the required summary, would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person.

(5) *CONTINUATION OF HEARING WITHOUT SUMMARY.*—If a judge makes the findings described in paragraph (4)(B)—

(A) if the alien involved is an alien lawfully admitted for permanent residence, the procedures described in subsection (c) shall apply; and

(B) in all cases the special removal hearing shall continue, the Department of Justice shall cause to be delivered to the alien a statement that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to section 505(e).

(c) *SPECIAL PROCEDURES FOR ACCESS AND CHALLENGES TO CLASSIFIED INFORMATION BY SPECIAL ATTORNEYS IN CASE OF LAWFUL PERMANENT ALIENS.*—

(1) *IN GENERAL.*—The procedures described in this subsection are that the judge (under rules of the special removal court) shall designate a special attorney (as defined in section 501(4)) to assist the alien—

(A) by reviewing in camera the classified information on behalf of the alien, and

(B) by challenging through an in camera proceeding the veracity of the evidence contained in the classified information.

(2) *RESTRICTIONS ON DISCLOSURE.*—A special attorney receiving classified information under paragraph (1)—

(A) shall not disclose the information to the alien or to any other attorney representing the alien, and

(B) who discloses such information in violation of subparagraph (A) shall be subject to a fine under title 18, United States Code, imprisoned for not less than 10 years nor more than 25 years, or both.

APPEALS

SEC. 507. (a) APPEALS OF DENIALS OF APPLICATIONS FOR ORDERS.—The Department of Justice may seek a review of the denial of an order sought in an application by the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days after the date of such denial. In such a case the entire record of the proceeding shall be transmitted to the Court of Appeals under seal and the Court of Appeals shall hear the matter *ex parte*. In such a case the Court of Appeals shall review questions of law *de novo*, but a prior finding on any

question of fact shall not be set aside unless such finding was clearly erroneous.

(b) *APPEALS OF DETERMINATIONS ABOUT SUMMARIES OF CLASSIFIED INFORMATION.*—Either party may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

(1) any determination by the judge pursuant to section 506(a)—

(A) concerning whether an item of evidence may be introduced in camera and ex parte, or

(B) concerning the contents of any summary of evidence to be introduced in camera and ex parte prepared pursuant to section 506(b); or

(2) the refusal of the court to make the findings permitted by section 506(b)(4)(B).

In any interlocutory appeal taken pursuant to this subsection, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the Court of Appeals under seal and the matter shall be heard ex parte.

(c) *APPEALS OF DECISION IN HEARING.*—

(1) *IN GENERAL.*—Subject to paragraph (2), the decision of the judge after a special removal hearing may be appealed by either the alien or the Department of Justice to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal.

(2) *AUTOMATIC APPEALS IN CASES OF PERMANENT RESIDENT ALIENS IN WHICH NO SUMMARY PROVIDED.*—

(A) *IN GENERAL.*—Unless the alien waives the right to a review under this paragraph, in any case involving an alien lawfully admitted for permanent residence who is denied a written summary of classified information under section 506(b)(4) and with respect to which the procedures described in section 506(c) apply, any order issued by the judge shall be reviewed by the Court of Appeals for the District of Columbia Circuit.

(B) *USE OF SPECIAL ATTORNEY.*—With respect to any issue relating to classified information that arises in such review, the alien shall be represented only by the special attorney designated under section 506(c)(1) on behalf of the alien.

(d) *GENERAL PROVISIONS RELATING TO APPEALS.*—

(1) *NOTICE.*—A notice of appeal pursuant to subsection (b) or (c) (other than under subsection (c)(2)) must be filed within 20 days after the date of the order with respect to which the appeal is sought, during which time the order shall not be executed.

(2) *TRANSMITTAL OF RECORD.*—In an appeal or review to the Court of Appeals pursuant to subsection (b) or (c)—

(A) the entire record shall be transmitted to the Court of Appeals, and

(B) information received pursuant to section 505(e), and any portion of the judge's order that would reveal the substance or source of such information, shall be transmitted under seal.

(3) *EXPEDITED APPELLATE PROCEEDING.*—In an appeal or review to the Court of Appeals pursuant to subsection (b) or (c):

(A) *REVIEW.*—The appeal or review shall be heard as expeditiously as practicable and the Court may dispense with full briefing and hear the matter solely on the record of the judge of the special removal court and on such briefs or motions as the Court may require to be filed by the parties.

(B) *DISPOSITION.*—The Court shall uphold or reverse the judge's order within 60 days after the date of the issuance of the judge's final order.

(4) *STANDARD FOR REVIEW.*—In an appeal or review to the Court of Appeals pursuant to subsection (b) or (c):

(A) *QUESTIONS OF LAW.*—The Court of Appeals shall review all questions of law de novo.

(B) *QUESTIONS OF FACT.*—(i) Subject to clause (ii), a prior finding on any question of fact shall not be set aside unless such finding was clearly erroneous.

(ii) In the case of a review under subsection (c)(2) in which an alien lawfully admitted for permanent residence was denied a written summary of classified information under section 506(b)(4), the Court of Appeals shall review questions of fact de novo.

(e) *CERTIORARI.*—Following a decision by the Court of Appeals pursuant to subsection (b) or (c), either the alien or the Department of Justice may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari except as provided by the Court of Appeals or a Justice of the Supreme Court.

(f) *APPEALS OF DETENTION ORDERS.*—

(1) *IN GENERAL.*— The provisions of sections 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom section 508(b)(1) applies. In applying the previous sentence—

(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit, and

(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

(2) *NO REVIEW OF CONTINUED DETENTION.*—The determinations and actions of the Attorney General pursuant to section 508(c)(2)(C) shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates the alien's rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the United States Court of Appeals for the District of Columbia Circuit.

DETENTION AND CUSTODY

SEC. 508. (a) INITIAL CUSTODY.—

(1) *UPON FILING APPLICATION.*—Subject to paragraphs (2) and (3), the Attorney General may take into custody any alien with respect to whom an application under section 503 has been filed and, notwithstanding any other provision of law, may retain such an alien in custody in accordance with the procedures authorized by this title.

(2) *SPECIAL RULES FOR PERMANENT RESIDENT ALIENS.*—An alien lawfully admitted for permanent residence shall be entitled to a release hearing before the judge assigned to hear the special removal hearing. Such an alien shall be detained pending the special removal hearing, unless the alien demonstrates to the court that—

(A) the alien, if released upon such terms and conditions as the court may prescribe (including the posting of any monetary amount), is not likely to flee, and

(B) the alien's release will not endanger national security or the safety of any person or the community.

The judge may consider classified information submitted in camera and ex parte in making a determination under this paragraph.

(3) *RELEASE IF ORDER DENIED AND NO REVIEW SOUGHT.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), if a judge of the special removal court denies the order sought in an application with respect to an alien and the Department of Justice does not seek review of such denial, the alien shall be released from custody.

(B) *APPLICATION OF REGULAR PROCEDURES.*—Subparagraph (A) shall not prevent the arrest and detention of the alien pursuant to title II.

(b) *CONDITIONAL RELEASE IF ORDER DENIED AND REVIEW SOUGHT.*—

(1) *IN GENERAL.*—If a judge of the special removal court denies the order sought in an application with respect to an alien and the Department of Justice seeks review of such denial, the judge shall release the alien from custody subject to the least restrictive condition or combination of conditions of release described in section 3142(b) and clauses (i) through (xiv) of section 3142(c)(1)(B) of title 18, United States Code, that will reasonably assure the appearance of the alien at any future proceeding pursuant to this title and will not endanger the safety of any other person or the community.

(2) *NO RELEASE FOR CERTAIN ALIENS.*—If the judge finds no such condition or combination of conditions, the alien shall remain in custody until the completion of any appeal authorized by this title.

(c) *CUSTODY AND RELEASE AFTER HEARING.*—(1) *RELEASE.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), if the judge decides pursuant to section 505(i) that an alien should not be removed, the alien shall be released from custody.

(B) *CUSTODY PENDING APPEAL.*—If the Attorney General takes an appeal from such decision, the alien shall remain in custody, subject to the provisions of section 3142 of title 18, United States Code.

(2) *CUSTODY AND REMOVAL.*—

(A) *CUSTODY.*—If the judge decides pursuant to section 505(i) that an alien shall be removed, the alien shall be detained pending the outcome of any appeal. After the conclusion of any judicial review thereof which affirms the removal order, the Attorney General shall retain the alien in custody and remove the alien to a country specified under subparagraph (B).

(B) *REMOVAL.*—

(i) *IN GENERAL.*—The removal of an alien shall be to any country which the alien shall designate if such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

(ii) *ALTERNATE COUNTRIES.*—If the alien refuses to designate a country to which the alien wishes to be removed or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so designated would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be removed to any country willing to receive such alien.

(C) *CONTINUED DETENTION.*—If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every 6 months shall provide to the attorney representing the alien at the special removal hearing a written report on the Attorney General's efforts. Any alien in custody pursuant to this subparagraph shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate.

(D) *FINGERPRINTING.*—Before an alien is transported out of the United States pursuant to this subsection, or pursuant to an order of exclusion because such alien is excludable under section 212(a)(3)(B), the alien shall be photographed and fingerprinted, and shall be advised of the provisions of section 276(b).

(d) *CONTINUED DETENTION PENDING TRIAL.*—

(1) *DELAY IN REMOVAL.*—Notwithstanding the provisions of subsection (c)(2), the Attorney General may hold in abeyance the removal of an alien who has been ordered removed pursuant to this title to allow the trial of such alien on any Federal or State

criminal charge and the service of any sentence of confinement resulting from such a trial.

(2) MAINTENANCE OF CUSTODY.—Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

(3) SUBSEQUENT REMOVAL.—Following the completion of a sentence of confinement by an alien described in paragraph (1) or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to carry out the provisions of subsection (c)(2) concerning removal of the alien.

(e) APPLICATION OF CERTAIN PROVISIONS RELATING TO ESCAPE OF PRISONERS.—For purposes of sections 751 and 752 of title 18, United States Code, an alien in the custody of the Attorney General pursuant to this title shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of a felony.

(f) RIGHTS OF ALIENS IN CUSTODY.—

(1) FAMILY AND ATTORNEY VISITS.—An alien in the custody of the Attorney General pursuant to this title shall be given reasonable opportunity to communicate with and receive visits from members of the alien's family, and to contact, retain, and communicate with an attorney.

(2) DIPLOMATIC CONTACT.—An alien in the custody of the Attorney General pursuant to this title shall have the right to contact an appropriate diplomatic or consular official of the alien's country of citizenship or nationality or of any country providing representation services therefor. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien's detention.

ACT OF OCTOBER 25, 1994

AN ACT To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

* * * * *

TITLE IV—CIVIL MONETARY PENALTY SURCHARGE AND TELECOMMUNICATIONS CARRIER COMPLIANCE PAYMENTS

SEC. 401. CIVIL MONETARY PENALTY SURCHARGE.

(a) IMPOSITION.—Notwithstanding any other provision of law, and subject to section 402(c) of this title, a surcharge of 40 percent

of the principal amount of a civil monetary penalty shall be added to each civil monetary penalty at the time it is assessed by the United States or an agency thereof.

(b) *APPLICATION OF PAYMENTS.*—Payments relating to a civil monetary penalty shall be applied in the following order: (1) to costs; (2) to principal; (3) to surcharges required by subsection (a) of this section; and (4) to interest.

(c) *EFFECTIVE DATES.*—(1) A surcharge under subsection (a) of this section shall be added to all civil monetary penalties assessed on or after October 1, 1995, or the date of enactment of this title, whichever is later.

(2) The authority to add a surcharge under this section shall terminate on October 1, 1998.

(d) *LIMITATION.*—The provisions of this section shall not apply to any civil monetary penalty assessed under title 26, United States Code.

SEC. 402. DEPARTMENT OF JUSTICE TELECOMMUNICATIONS CARRIER COMPLIANCE FUND.

(a) *ESTABLISHMENT OF FUND.*—There is hereby established in the United States Treasury a fund to be known as the Department of Justice Telecommunications Carrier Compliance Fund (hereinafter referred to as “the Fund”), which shall be available to the Attorney General to the extent and in the amounts authorized by subsection (c) of this section to make payments to telecommunications carriers, as authorized by section 109.

(b) *OFFSETTING COLLECTIONS.*—Notwithstanding section 3302 of title 31, United States Code, the Attorney General may credit surcharges added pursuant to section 401 of this title to the Fund as offsetting collections.

(c) *REQUIREMENTS FOR APPROPRIATIONS OFFSET.*—(1) Surcharges added pursuant to section 401 of this title are authorized only to the extent and in the amounts provided for in advance in appropriations acts.

(2)(A) Collections credited to the Fund are authorized to be appropriated in such amounts as may be necessary, but not to exceed \$100,000,000 in fiscal year 1996, \$305,000,000 in fiscal year 1997, and \$80,000,000 in fiscal year 1998.

(B) Amounts described in subparagraph (A) of this paragraph are authorized to be appropriated without fiscal year limitation.

(d) *TERMINATION.*—(1) The Attorney General may terminate the Fund at such time as the Attorney General determines that the Fund is no longer necessary.

(2) Any balance in the Fund at the time of its termination shall be deposited in the general fund of the Treasury.

(3) A decision of the Attorney General to terminate the Fund shall not be subject to judicial review.

SEC. 403. DEFINITIONS.

For purposes of this title, the terms “agency” and “civil monetary penalty” have the meanings given to them by section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, Oct. 5, 1990, 104 Stat. 890 (28 U.S.C. 2461 note).

**SECTION 140 OF THE FOREIGN RELATIONS
AUTHORIZATION ACT, FISCAL YEARS 1994 AND 1995**

SEC. 140. VISAS.

(a) **SURCHARGE FOR PROCESSING CERTAIN VISAS.—**

(1) * * *

[(2) Fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.

[(3) For fiscal years 1994 and 1995, fees deposited under the authority of paragraph (2) may not exceed a total of \$107,500,000. For subsequent fiscal years, fees may be collected under the authority of paragraph (1) only in such amounts as shall be prescribed in subsequent authorization Acts.]

(2) For fiscal years 1996 and 1997, not more than \$250,000,000 in fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any Department of State appropriation to recover the costs of the Department of State's border security program, including the costs of—

(A) installation and operation of the machine readable visa and automated name-check process;

(B) improving the quality and security of the United States passport;

(C) passport and visa fraud investigations; and

(D) the technological infrastructure to support and operate the programs referred to in subparagraphs (A) through (C).

Such fees shall remain available for obligation until expended.

(3) For any fiscal year, fees collected under the authority of paragraph (1) in excess of the amount specified for such fiscal year under paragraph (2) shall be deposited in the general fund of the Treasury as miscellaneous receipts.

* * * * *

[(5) No fee or surcharge authorized under paragraph (1) may be charged to a citizen of a country that is a signatory as of the date of enactment of this Act to the North American Free Trade Agreement, except that the Secretary of State may charge such fee or surcharge to a citizen of such a country if the Secretary determines that such country charges a visa application or issuance fee to citizens of the United States.]

* * * * *

SECTION 1403 OF THE VICTIMS OF CRIME ACT OF 1984

CRIME VICTIM COMPENSATION

SEC. 1403. (a) * * *

(b) A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

(1) * * *

* * * * *

(6) such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) the crimes would be compensable crimes had they occurred inside that State; and

(B) the places the crimes occurred in *are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18, United States Code)*, or are States not having eligible crime victim compensation programs;

* * * * *

(d) As used in this section—

(1) * * *

* * * * *

(3) the term “compensable crime” means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes *crimes involving terrorism*, driving while intoxicated, and domestic violence; and

* * * * *

TITLE 28, UNITED STATES CODE

* * * * *

PART IV—JURISDICTION AND VENUE

* * * * *

CHAPTER 97—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

* * * * *

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) * * *

* * * * *

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance of the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; [or]

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable[.]; or

(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that—

(A) an action under this paragraph shall not be instituted unless the claimant first affords the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration;

(B) an action under this paragraph shall not be maintained unless the act upon which the claim is based occurred while the individual bringing the claim was a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act); and

(C) the court shall decline to hear a claim under this paragraph if the foreign state against whom the claim has been brought establishes that procedures and remedies are available in such state which comport with fundamental fairness and due process.

* * * * *

(e) For purposes of paragraph (7) of subsection (a)—

(1) the terms “torture” and “extrajudicial killing” have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

(2) the term “hostage taking” has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

(3) the term “aircraft sabotage” has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

* * * * *

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) * * *

* * * * *

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement[.], or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) * * *

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), [or (5)] (5), or (7), or 1605(b) of this chapter, regardless of whether the property is or was [used for the activity] *involved in the act upon which the claim is based.*

* * * * *

DISSENTING VIEWS

We deplore both domestic and international terrorism and were profoundly shocked and disturbed by recent acts of violence in Oklahoma City and the World Trade Center in New York. Although we strongly support efforts to enhance our nation's ability to respond to such acts of terrorism, we must dissent from H.R. 1710. While we support several provisions in the legislation, there are many others we oppose because they threaten our fundamental rights and liberties. Furthermore, proposed amendments which could have provided real limitations on terrorist-related violence—by requiring that explosive material include identifying taggants and banning armor-piercing bullets—were defeated by the majority during the Committee markup.

The threats posed to our precious Constitutional rights by H.R. 1710 are myriad. The bill would: (i) criminalize the exercise of legitimate rights of free speech and association; (ii) mandate the creation of secret courts (strikingly akin to “star chambers”) which could order deportation of legal aliens based on undisclosed evidence; (iii) significantly broaden the government's right to wiretap and conduct electronic surveillance; and (iv) federalize broad new categories of crimes previously dealt with by the States.

Many of the objectionable provisions in H.R. 1710 are completely unrelated to the problem of terrorism. Instead the bill's proponents would use the Nation's anguish and heightened concern in the wake of the Oklahoma City and World Trade Center bombings as an excuse to adopt proposals rejected by previous Congresses. The truth is that terrorist activity is already a crime which may be fully investigated and prosecuted under federal law, as our experiences with these tragic episodes have borne out.¹

In our view, the United States has not proven to be a fertile breeding ground for terrorism because of its unique openness, tolerance and respect for differences of opinion and civil liberties. History has taught us that we should not use the threat of violence as an excuse to suppress Constitutional rights and liberties. As Benjamin Franklin stated, “they that give up essential liberty to obtain a little temporary safety deserve neither liberty or safety.”²

Unfortunately, this legislation would erode our legitimate rights while doing little to protect the safety of our citizens and law enforcement officers. While the Oklahoma City bombing has properly caused us to reconsider our ability to protect ourselves against ter-

¹ M. Gladwell, *Sheik, 9 Others Convicted in N.Y. Bomb-Terror Conspiracy*, Wash. Post, Oct. 2, 1995, at A1 (stating that a federal jury found groups guilty of “seditious conspiracy” and various other crimes relating to World Trade Center bombing); P. Thomas and G. Lardner, Jr., *Grand Jury Charges Two With Bombing*, Wash. Post, Aug. 11, 1995, at A1 (stating that a federal grand jury accused defendants of “conspiracy to bomb” and other charges relating to Oklahoma City bombing).

² Suzy Platt, *Respectfully Quoted* 201 (1989).

rorism, we believe the Committee needs to conduct a far more careful and focused examination than it has to date.

We would also note that we have recently learned that the Majority is planning to offer a comprehensive substitute amendment to H.R. 1710 during floor consideration of the legislation. This substitute has been negotiated behind closed doors without any input from Members of the Minority. According to a "Dear Colleague" letter circulated by Chairman Hyde and Mr. Barr on November 30, 1995, it appears that in addition to deleting various provisions of H.R. 1710 as reported by the Committee, the substitute will add several important new sections—most notably changes in Habeas Corpus. No showing has been made that there is any relationship between death row appeals and the problem of terrorism, and the issue was not subject to any hearing, debate or amendment as part of the process of considering H.R. 1710. This substitute will come to the House floor on a "take it or leave it" basis, without the benefit of any Minority input or reaction. The Majority has apparently foregone the opportunity to seek a genuine bipartisan response to the problem of terrorism, and opted instead to alter the debate to reflect their own narrow ideological agenda derived from the "Contract with America."

ANALYSIS OF LEGISLATION

There are several provisions in H.R. 1710 that are worthy of support. Many of the new offenses designated in Title I of the bill are warranted. For example, we agree with sections providing greater protection of federal employees (section 101); clarifying the reach of overseas terrorism offenses (section 106); and clarifying the scope of the offense related to possession of stolen explosives (section 111). The increased penalties for explosives and firearms offenses set forth in Title II are also reasonable in our view. We support Titles IV and V of the bill which clarify the application of federal law prohibiting certain transactions involving nuclear material and implementing the Montreal Convention on the Marking of Plastic Explosives, and approve of the bill's authorization of new appropriations to hire additional FBI agents and equipment to investigate terrorism and establish a counterterrorism center (section 701).

We would also note that a number of constructive provisions were added during the Committee markup, including: (i) an amendment offered by Mr. Frank subjecting the FBI to penalties and damages for unlawful disclosure of confidential information; an amendment offered by Mr. Schiff and Mrs. Schroeder authorizing funding to develop counter-terrorism technologies; and an amendment offered by Mr. Berman clarifying U.S. courts' jurisdiction over lawsuits brought against specified foreign states for torture, hostage-taking and other terrorist actions.

Unfortunately, H.R. 1710 includes numerous other provisions which threaten our civil liberties and bear little if any relationship to the problem of terrorism. At the same time, the legislation does not go far enough in that it fails to require the inclusion of identifying taggants on explosives or to ban armor-piercing bullets.

I. INCLUSION OF PROVISIONS WHICH THREATEN OUR CIVIL LIBERTIES
AND OTHER CONSTITUTIONAL RIGHTS

A. Prohibiting donations to and membership in designated organizations—A threat to freedom of speech and association

H.R. 1710 would significantly limit the ability of persons located inside and outside of the United States to donate funds to or otherwise associate with foreign organizations disliked by our government. Section 102 of H.R. 1710 would for the first time make it a crime to donate property or services to groups designated as “terrorist” by the executive branch, even if the property or services are used solely for humanitarian services.³ Furthermore, section 103 would authorize FBI investigations into such activity even where the investigation is premised on an individual’s non-violent political or religious beliefs.⁴ These provisions harken back to McCarthyism and other bleak periods in our country’s history when we attacked people for their beliefs and associations, rather than their conduct.⁵

By limiting the groups our citizens are permitted to associate with and support—even for purely lawful and humanitarian purposes—H.R. 1710 directly conflicts with the First Amendment’s protection of freedom of association. The Supreme Court has repeatedly held that contributing money to political groups is protected conduct under the First Amendment unless it can be proved that the contribution is intended to further an unlawful activity.⁶ In *Healey v. James* the Court explained:

* * * guilt by association alone, without [a showing] that an individual’s association poses the threat feared by the Government, is an impermissible basis upon which to deny First Amendment rights. The government has the burden of establishing a knowing affiliation with an organization pursuing unlawful aims and goals, and a specific intent to further those illegal aims.⁷

Because the activities of many “controversial” political groups also have a large humanitarian component, the bill’s restrictions on fundraising are likely to have a significant adverse impact on relief

³ Current law already criminalizes the provision of material support for criminal terrorist activities (18 U.S.C. §2339A); so the legislation would criminalize support for humanitarian activities. Although H.R. 1710 includes a specific carve-out for the provision of medicine and religious materials, it would still criminalize support for a variety of humanitarian services, such as school supplies. Also, since the proscribed activity could include membership fees and payment of taxes, it might operate as a de facto prohibition on membership in designated organizations or paying taxes to foreign states which may be designated as “terrorist.”

⁴ Last year, when Congress prohibited providing material support for terrorist acts, the legislation specifically prohibited investigations into activities protected by the First Amendment or which do not involve intentional misconduct. See 18 U.S.C. §2339A(c). Section 103 of H.R. 1710 would delete these safeguards.

⁵ The FBI has an unfortunate history of commencing unfounded investigations into the First Amendment activity of groups, such as the COINTELPRO investigations of civil rights groups and leaders in the 1970’s. See Select Committee to Study Governmental Operations with respect to Intelligence Activities, U.S. Senate, “Book II, Intelligence Activities and the Rights of Americans”, S. Rep. No. 755, 94th Cong., 2d Sess. (1975).

⁶ See *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 493–95 (1985); *Roberts v. United States Jaycees*, 468 U.S. 609, 626–27 (1984); *Citizens Against Rent Control v. Berkely*, 454 U.S. 290, 295–96 (1981).

⁷ *Healey v. James*, 408 U.S. 169, 186 (1972).

efforts in troubled parts of the world.⁸ Also, the bill could arbitrarily limit donations to entities which have completely altered their purposes and functions—such as the African National Committee—since the terrorist designation could apply to any foreign organization which has at any time in the past engaged in “terrorist” activity.

We also object to section 611 of the bill which specifies that membership in any organization designated as “terrorist” constitutes grounds for deporting or excluding an alien from the United States, regardless of whether or not the individual has engaged in or supported any unlawful acts.⁹ This provision would resurrect the infamous McCarran-Walter Act,¹⁰ which was repealed by Congress in 1990 after it was held to be unconstitutional as applied to several aliens.¹¹

The fact that aliens in this country are entitled to full First Amendment rights was forcefully reaffirmed as recently as last month in *Arab-American Anti-Discrimination Committee v. Reno*.¹² The Ninth Circuit found that the Immigration and National Services’ proposed deportation of seven Palestinians and a Kenyan for their alleged ties to the Popular Front for the Liberation of Palestine was inconsistent with First Amendment freedom of association protections holding that, “the values underlying the First Amendment require the full applicability of First Amendment rights to the deportation setting.”¹³

Of additional concern is the discretionary—and largely non-reviewable—ability of the Secretary of State to designate foreign organizations as “terrorist” for purposes of the aforescribed fundraising and membership prohibitions. Given the bill’s broad definition of “terrorism,”¹⁴ as a practical matter this will give the Sec-

⁸For example, to conduct relief work in Somalia, organizations have been required to give a portion of their supplies to a faction controlled by Mohammed Farah Aided, which could very well be designated a “terrorist organization.”

⁹Under current law, a person who has engaged in terrorism, or about whom a consular officer or the Attorney General has a reasonable ground to believe is likely to engage in any terrorism, is already excludable from the United States. 8 U.S.C. §1182(a)(3)(B)(i).

¹⁰The McCarran-Walter Act allowed, among other things, for the deportation of aliens who “advocate the economic, international and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization” that so advocates. 8 U.S.C. 1251(a)(6) (D) & (H) (1988). That law, which applied to aliens who were members of the communist party or advocated communist doctrine, was used to exclude Pierre Trudeau, the former Prime Minister of Canada, French Actor Yves Montand, British Author Graham Greene, and Columbian Novel laureate Gabriele Garcia Marquez. See Counter-Terrorism Legislation, Hearing before the Subcomm. on Terrorism, Technology, and Government Information of the Senate Comm. on the Judiciary, 104th Congress, 1st Sess. 21 (May 4, 1995) (statement of Professor David Cole) [hereinafter, Senate Counter-Terrorism Hearings].

¹¹See Immigration Act of 1990, Pub. L. No. 101-649 (repealing McCarran-Walter Act); *Rafeedie v. INS*, 795 F. Supp. 13, 22-23 (D.D.C. 1992); *American-Arab Anti-Discrimination Comm. v. Meese*, 714 F. Supp. 1060 (C.D. Cal. 1989), vacated, *American-Arab Anti-Discrimination Comm. v. Thornburgh*, 970 F.2d 501 (9th Cir. 1991) (holding the McCarran-Walter Act to be unconstitutional as applied).

¹²*American-Arab Anti-Discrimination Committee v. Reno* No. 94-55405, 1995 U.S. App. LEXIS 31415, *1, *42 (9th Cir., Nov. 8, 1995) (per curiam).

¹³Id. at *43. A Washington Post editorial emphasized the fundamental fairness of the Reno decision:

[T]he bottom line from the appellate court is this: Aliens present in the United States have the same right to political speech and association as citizens. Aliens cannot be singled out for deportation because they exercise those rights These clear and principled determinations are on firm constitutional ground.

Aliens and Speech, Wash. Post, Nov. 13, 1995, at A20.

¹⁴Section 315 of the legislation would substantially broaden the definition of “terrorism” in current law to cover domestic (as opposed to international) activity, including domestic gun

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retary of State completely open-ended authority to determine which organizations to blacklist.¹⁵ This could very well lead to the law being applied in a selective manner, raising serious due process issues¹⁶ (as President Bush once stated, “one man’s terrorist is another man’s freedom fighter”).¹⁷

B. Using secret evidence to deport aliens—A threat to due process

Section 601 of the bill would for the first time allow aliens (including permanent residents) to be deported based on classified evidence submitted on an ex parte basis. An alien alleged to be involved in terrorism would not even be permitted to receive a summary of the evidence used against him if the 5-judge panel finds his or her presence or the preparation of the summary would likely cause serious and irreparable harm or injury. Although permanent residents are permitted to have a member of a panel of specially approved attorneys review the secret evidence, the bill does not permit the permanent resident to select his own attorney—even from within the pre-approved panel—or confer with such counsel concerning the secret evidence. Section 601 also provides for immediate detention without bail and limited one-sided appeal rights only for the government. Further, there is no requirement that the government disclose any exculpatory evidence to the alien or even to the special court.

This provision is a clear violation of the right to due process as guaranteed by the Fifth and Fourteenth Amendments.¹⁸ The cardinal rule of due process is that evidence used against a party must be fully disclosed to that party. Justice Frankfurter has observed that “[s]ecrecy is not congenial to truth-seeking [and] * * * [n]o better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.”¹⁹ Conservative legal scholar Bruce Fein has written that H.R. 1710’s ex parte evidence procedure “seem[s] a blatant denial of an opportunity for a fair opportunity to defend.”²⁰

The Supreme Court and lower courts have consistently held that aliens who have entered the United States gain the full protections

crimes and some forms of vandalism. Section 104 would classify as federal crimes “acts of terrorism transcending national boundaries” that are no more than a broad range of violent activity already proscribed by state criminal law, if the acts are certified as “terrorism” by the Attorney General.

¹⁵ Although the bill grants organizations 30 days after they have been designated as “terrorist” to seek judicial review in the D.C. Circuit Court of Appeals, this is unlikely to provide the opportunity for any meaningful review. Few courts are likely to second guess the Secretary of State on matters purportedly related to foreign policy. Moreover, even this weak standard of review is unavailable to the persons in this country who will be subject to criminal sanction or deportation for involvement with the foreign organization, since judicial review is limited to foreign organizations only—many of which may not have the resources or inclination to come to Washington, D.C. to contest the designation.

¹⁶ See Senate Counter-Terrorism Hearings, *supra* note 10, at 8.

¹⁷ *Id.*

¹⁸ Provisions in section 611 limiting an alien’s right to select an attorney and denying the attorney the ability to discuss the evidence with his client also raise serious ethical and lawyer-client privilege issues. It has also been noted that section 611 is inconsistent with U.S. treaty obligations pertaining to due process protections and freedom of association under the International Covenant on Civil and Political Rights. See Letter from Lawyers Committee for Human Rights to Subcommittee on Crime, May 12, 1995.

¹⁹ *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 171–72 (1951).

²⁰ “Comprehensive Antiterrorism Act of 1995,” Hearings before the House Comm. on the Judiciary, 104th Cong., 1st Sess. 8 (June 12–13, 1995) (statement of former Associate Deputy Attorney General Bruce Fein).

of the Constitution's due process clause, and cannot be deported on the basis of evidence not disclosed to them.²¹ In the 1976 case of *Matthews v. Diaz*, the Court wrote:

There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment as well as the Fourteenth Amendment, protects every one of these persons from deprivations of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.²²

Only last month in *Arab-American Anti-Discrimination Committee v. Reno*,²³ the Ninth Circuit reaffirmed this principle when it found that "[a]liens who reside in this country are entitled to full due process protections" and noted that "the very foundation of the adversary process assumes the use of undisclosed information will violate due process * * *"²⁴ The Court acknowledged that while "not all of the rights of criminal defendants are applicable in the civil context, the procedural due process notice and hearing requirements have 'ancient roots' in the rights to confrontation and cross-examination" and should be fully provided for in deportation proceedings.²⁵

Although we have previously allowed the use of secret evidence to exclude aliens who have not yet entered this country, our experience with such procedures highlights the dangers present in denying any party due process. In the infamous case *U.S. ex rel. Knauff v. Shaughnessy*,²⁶ secret evidence was used to exclude from the United States the German wife of a U.S. citizen who had fled to England when Hitler came to power. In his dissenting opinion, Justice Jackson argued, "[t]he plea that evidence of guilt must be secret is abhorrent to free men, because it provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected."²⁷ In a subsequent hearing necessitated by public outrage over the denial of Mrs. Knauff's visa it was learned that the "confidential source" offering the secret evidence was a jilted lover. When the Immigration and Naturalization Service sought to use secret evidence to expel an alien several years ago, the D.C. Circuit likened the alien's position to that of "Joseph K. in *The Trial*," finding that "[i]t is difficult to imagine how even someone innocent of all wrongdoing could meet such a burden."²⁸

H.R. 1710 also includes a number of additional immigration law amendments which bear little if any relationship to the problem of terrorism. For example, section 621 of the bill eliminates alien exclusion hearings and grants low level immigration officers at air-

²¹ See *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953) (INS could not subject returning permanent resident alien to "summary exclusion" based on secret evidence); *Rafeedie v. INS*, 795 F. Supp. 13 (D.D.C. 1992) (INS attempt to expel a permanent resident alien on the basis of undisclosed classified information held to be unconstitutional).

²² *Matthews v. Diaz*, 426 U.S. 67, 77 (1976).

²³ *American-Arab Anti-Discrimination Committee v. Reno* No. 94-55405, 1995 U.S. App. LEXIS 31415, *1, *42 (9th Cir., Nov. 8, 1995) (per curiam).

²⁴ *Id.* at *52, *62.

²⁵ *Id.* at *61.

²⁶ *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

²⁷ *Id.* at 551.

²⁸ *Rafeedie v. INS*, 880 F.2d 506, 516 (D.C. Cir. 1989).

ports and other ports of entry non-reviewable authority to exclude and deport aliens seeking entry without proper documents. The section also severely limits the review rights of those seeking asylum due to fear of persecution in their homeland. Section 623 seeks to strip away aliens' due process rights by creating a legal fiction treating any alien shown to be present unlawfully to summary "exclusion" (rather than deportation) proceedings.²⁹ Section 631 grants federal law enforcement officials access to otherwise confidential immigration files.³⁰ There was little testimony offered at the hearings concerning these provisions, which while unlikely to deter terrorists, will have a profound impact on the lives of many aliens and their families. Whatever their conceivable merits, we see no reason to consider these provisions in the context of counterterrorism legislation at a time when separate omnibus immigration legislation has been ordered reported by the Committee.³¹

C. Expanded investigatory and search and seizure authority—A threat to our privacy

Title III of the legislation represents an unprecedented expansion of the federal government's authority to intrude upon our privacy. The bill not only expands the government's wiretap and electronic surveillance authority, but authorizes a number of intrusive new investigatory techniques in cases involving so-called "foreign counterintelligence investigations." Neither of these expansions is likely to have any effect on the government's ability to investigate or deter terrorist activity.

1. Expanded wiretap and electronic surveillance authority

Section 301 of H.R. 1710 adds twelve new crimes to the list of offenses that will support a wiretap order under the Electronic Communications Privacy Act.³² It does so despite the fact that there has been no showing that any additional authority is needed or that the FBI has ever failed to obtain a desired wiretap because a particular predicate offense was not on the list. In fact, it has been reported that not once since 1988 has the FBI sought electronic surveillance authority in a case involving bombing, arson, or firearms.³³

Section 306 of the bill creates a "good faith" exception to the wiretap statute's exclusionary rule. The current wiretap exclusionary rule is based on the Constitutional requirement that evidence obtained from an unlawful search may not be introduced as evi-

²⁹ Pursuant to the "entry doctrine" aliens who have effected entry, rather than being detained at the border, are subject to more formal deportation proceedings protected by Fifth Amendment due process rights. See, e.g., *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925). However, any effort to strip away these rights from aliens who have developed ties in the United States, even where they have entered without documentation may well be unconstitutional. See *Landon v. Plasencia*, 459 U.S. 21, 33 (1982); *Rosenberg v. Fleuti*, 374 U.S. 449, 460 (1963); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953).

³⁰ These files were made confidential as part of an effort to encourage aliens to come forward and register for general amnesty pursuant to the Immigration Reform and Control Act of 1986. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603 (1986).

³¹ See H.R. 2202, 104th Cong., 1st Sess. (1995) (ordered reported by the House Judiciary Comm. on Oct. 24, 1995).

³² 18 U.S.C. 2510 et seq.

³³ Wiretap Report for the Period January 1, 1994 to December 31, 1994, Administrative Office of the United States Courts, at 21 (Apr. 1995).

dence in court.³⁴ Although in recent years the Supreme Court has limited the Constitutional exclusionary requirement in cases where an unlawful search was undertaken in “good faith” reliance on a warrant,³⁵ it has never allowed evidence from unlawful searches to be introduced where there was no understanding that a warrant or court order had been issued (as section 306 would). History has established that there is no better deterrent to the government’s propensity to intrude on our privacy than the exclusionary rule³⁶ and whether or not section 306 is held to be unconstitutional,³⁷ we believe it is poor policy to permit law enforcement officers to conduct wiretaps and other searches without the benefit of a court order. (We would also point out that the Majority’s support of this section appears to be directly inconsistent with their strident opposition to the ATF’s search of the Branch Davidian Waco, Texas compound for illegal guns pursuant to an allegedly defective warrant).³⁸

Section 307 of the bill would authorize federal law enforcement officers to intercept “stored e-mail” and “electronic funds transfer” information without any required showing or court order. This new authorization would apply to any interception involving any federal case—there is no limitation to terrorism-related crimes. Again, there has been no showing made that such an intrusion upon our privacy is justified or is in any way related to the problem of terrorism.

Section 308 would allow federal law enforcement officers to wiretap telephones without any court order on a temporary 48-hour basis, so long as the wiretap is purportedly related to domestic or international terrorism. Since current law already authorizes emergency wiretaps where there is risk of immediate death or serious physical injury to any person or a threat to the national security,³⁹ we do not believe it is necessary to grant federal law enforcement officials further “emergency” authority.⁴⁰

Another provision raising serious Constitutional concerns is section 309, pertaining to so-called “roving wiretaps” (i.e., where a target is subject to wiretapping as he or she goes from phone to phone, rather than being restricted to specific phones). Roving wiretaps are particularly intrusive investigatory techniques, because they make it far more likely that conversations involving in-

³⁴ See *United States v. Weeks*, 232 U.S. 383 (1914); *Mapp v. Ohio*, 367 U.S. 643 (1961) (applying exclusionary rule in Fourth Amendment cases in State as well as federal courts).

³⁵ *United States v. Leon*, 468 U.S. 897 (1984). See also, *Arizona v. Evans*, 115 S.Ct. 1185 (1995) (stating that the exclusionary rule was held inapplicable where there was a reasonable, but mistaken belief that a warrant was outstanding).

³⁶ See Exclusionary Rule Reform Act of 1995, H. Rep. No. 17, 104th Cong., 1st Sess. 17–19 (1995), dissenting views (“[T]he exclusionary rule protects the very integrity of the criminal justice system by requiring law enforcement to articulate to the judiciary the factors indicating the existence of probable cause. By so doing, the rule encourages careful police work that will help build the prosecution case at trial.”)

³⁷ This would have the effect of permitting terrorists arrested through invalid wiretaps to go free.

³⁸ Oversight Hearings on Federal Law Enforcement Actions in Relation to the Branch Davidian Compound in Waco, Texas, Joint Hearings before the Subcomm. on Crime, House Comm. on the Judiciary, and Subcomm. on National Security, International Affairs, and General Justice, House Comm. on Government Reform and Oversight, 104th Cong., 1st Sess. (July 1995) [hereinafter, *Waco Hearings*].

³⁹ 18 U.S.C. § 2518(7)(A).

⁴⁰ The term “terrorism” is subject to very broad construction, and by vastly enhancing the government’s ability to intercept communications, section 308 may well be found to have gone beyond the “exigent circumstances” exception to the Fourth Amendment specified in *Berger v. New York*, 388 U.S. 41 (1967) and *Katz v. United States*, 389 U.S. 347 (1967)). See also *supra* note 14.

nocent third parties will be inadvertently recorded. Under current law, a roving wiretap may only be approved by a court where there is a showing that the person whose communications are to be intercepted has the “purpose to thwart interception by changing facilities.”⁴¹ By eliminating this required showing, section 309 will likely be found unconstitutional, since courts have emphasized the “purpose to thwart interception” requirement in upholding the constitutionality of the underlying statute.⁴²

Section 310 grants the FBI the general authority to obtain access to local telephone billing information in all federal cases, without requiring grand jury approval. We see no need to provide such a general extension of authority which again goes well beyond the problem of terrorism.

2. New investigatory techniques in foreign counterintelligence cases

Sections 302, 303, and 304 provide federal law enforcement officials with new investigatory authority in so-called “foreign counterintelligence” operations (i.e., involving foreign espionage). These sections would authorize intrusive investigations into the affairs of U.S. citizens even though no potential legal violation has been identified.

Section 302 grants the FBI the authority to utilize “pen registers” (which record the number dialed on a telephone) and “trap and trace” devices (which record the number from which a call originates, such as through so-called “caller ID”).⁴³ Section 303 and 304 grant the FBI the authority to obtain access to consumer credit reports, and the records of common carriers, public accommodation, physical storage, and vehicle rental facilities, with the approval of a court or magistrate. All of these matters are currently accessible to the FBI in ordinary criminal investigations, and these provisions would extend the FBI’s authority where no criminal predicate was involved. Since there has been no nexus shown between “foreign counterintelligence” and incidents of terrorism, we do not believe the provisions should be included in H.R. 1710.

D. Federalization of crimes of violence—A threat to the constitutional principle of federalism

Sections 104 and 315 of the bill would convert into federal “terrorism” crimes a broad range of violent activity already proscribed by state criminal law. Section 104 federalizes several crimes currently punishable under state law, including assault with a deadly weapon and damage to property, so long as one of a number of tenuous jurisdictional nexuses can be met and the Attorney General “certifies” that the act is in any way “terrorism” related. Section 315 broadly defines “terrorism” to include domestic as well as international activity, including domestic gun crimes and some

⁴¹ 18 U.S.C. § 2518(1)(b).

⁴² See *United States v. Bianco*, 998 F.2d 1112 (2d Cir. 1993), cert denied 114 S.Ct. 1644 (1994); *United States v. Silverman*, 732 F. Supp. 1057 (S.D. Cal. 1990), aff’d in relevant part, *United States v. Petti*, 973 F.2d 1441 (9th Cir. 1992).

⁴³ Under current law, the government may obtain an order authorizing the use of trap and trace devices by submitting an application including a certification that the information likely to be obtained is relevant to an ongoing criminal investigation. 18 U.S.C. § 3122–23.

forms of vandalism. Collectively, these provisions threaten to upset the historical balance between federal and State law enforcement.

Moreover, once a particular form of conduct is deemed to be, or alleged to be “terrorism,” a number of punitive collateral consequences ensue. Pursuant to section 102, providing material support or resources—including cash, meeting facilities, transportation, or goods for the conduct of “terrorism”—would be a crime punishable by fine and up to ten years in prison. Pursuant to section 307, the federal government is permitted to utilize a broad range of intrusive investigatory techniques, including wiretaps with court orders and emergency wiretaps, without a court order in connection with “terrorism.” Further, section 104 eases the ordinary rules of prosecution applicable to terrorism-related offenses, by, for example, narrowing the grounds for bail and not requiring that a conviction for conspiracy include proof of an overt act by any of the conspirators.

In essence, the legislation creates the option of federal prosecution for conduct otherwise subject to State prosecution with enhanced investigatory techniques and subject to eased procedural rules. The decision whether or not to treat conduct as “terrorism” is, to a large extent, left to the discretion of the Attorney General. The Attorney General would be placed in the position of deciding whether to prosecute conduct as “terrorism,” based on an unreviewable determination about the political motivation of the actor. This could easily lead to selective prosecution of those with unpopular or controversial opinions.

E. Expanding the role of the military in law enforcement—A threat to a civil society

Section 312 allows the military to participate in law enforcement activity involving biological or chemical weapons. Although the assistance is limited to so-called “technical and logistical assistance,” no effort has been made in the legislation to define this crucial term other than to authorize the Attorney General and Secretary of Defense to promulgate regulations concerning the nature of permitted assistance.⁴⁴

Although section 312 purports to limit the military’s role to situations where civilian expertise is “not readily available” and military capabilities are “needed,” as a practical matter the provision leaves significant, essentially non-reviewable discretion to the Justice and Defense Departments. As a result, the provision would abrogate the long accepted American tradition, as set forth in the Posse Comitatus Act, prohibiting the use of the military in domestic law enforcement matters.⁴⁵ (We would also note that the Major-

⁴⁴The only limitation set forth in the bill is that the military is not granted arrest authority or permitted to assist in conducting searches and seizures, but even this limitation is inoperative in cases involving the immediate protection of life.

⁴⁵Except in certain narrowly defined circumstances such as offenses involving nuclear materials, current federal law prohibits the use of military as a “posse comitatus” or otherwise to execute the laws. 18 U.S.C. §§831, 1385. This prohibition on military involvement in law enforcement is linked to our nation’s tradition of civilian control of the military and a recognition of the dangers posed by setting the military against our own citizens. The Posse Comitatus Act grew out of enforcement concerns during post-Civil War reconstruction, as well as concerns about the use of the military to suppress labor movements and the frequency with which authoritarian regimes have used their militaries as law enforcers. See generally, Meeks, *Illegal Law*

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ity's support for an expanded military role in law enforcement in the context of H.R. 1710 is inconsistent with their position taken at the Waco hearings, when many Republican members expressed deep concern regarding the military providing ATF agents with training and equipment in preparation for the raid on the Branch Davidian compound).⁴⁶

II. OMISSION OF PROVISIONS WHICH WOULD PROTECT FEDERAL EMPLOYEES FROM "COP-KILLER" BULLETS AND REQUIRED TAGGING OF EXPLOSIVE MATERIALS

The Majority rejected important amendments offered at the Committee markup which would have banned so-called "cop-killer" bullets and authorized the Secretary of Treasury to require the inclusion of "taggants" (tracer elements) and make certain explosive material inert. Instead of acting to prevent needless deaths through the adoption of these common sense amendments, the Committee substituted mere non-binding studies. Since the public consensus to respond to the problem of terrorism may well be diffused by the time these separate studies are concluded, the delay will allow the special interests opposing these provisions to more easily defeat any subsequent legislative initiatives.

A. Failure to ban armor-piercing bullets

Current law bans bullets designed to pierce bullet proof vests based on the materials the bullets are made of (e.g., tungsten or depleted uranium) or their physical specifications (e.g., the ratio of the bullet's jacket weight to core weight).⁴⁷ Unfortunately, there is a loophole in the current law which allows manufacturers to design bullets which conform to the physical limitations of the statute, yet are still able to pierce bullet-proof vests. For example, last year the statute had to be revised to respond to an armor-piercing bullet known as the "M-39B," designed by a Swedish manufacturer.⁴⁸

Rather than react after-the-fact to each new bullet-piercing design that manufacturers may devise—risking the possibility of needless killings of federal and local law enforcement officials wearing bullet-proof vests in the line of duty—in our view it would be far preferable to provide for a definition of armor-piercing bullets based on a more generic performance standard. When Mr. Schumer offered an amendment allowing the Justice Department to develop such a standard, the Committee initially approved it by a sixteen to fourteen vote.

However, the next day, Representatives Flanagan and Heineman—who had initially supported the proposal—changed their positions, and the Republicans used a procedural device known as a "motion to reconsider" to nullify the amendment approved by the Committee, and instead substituted a non-binding study of the problem. This approach flies in the face of support for

Enforcement; Aiding Civil Authorities In Violation of the Posse Comitatus Act, 70 Mil. L. Rev. 83 (1975).

⁴⁶ See Waco Hearings, *supra* note 38.

⁴⁷ 18 U.S.C. § 921(a)(17)(B).

⁴⁸ See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 110519, 108 Stat. 2020 (1994).

a “cop-killer” bullets ban by the Fraternal Order of Police,⁴⁹ and unnecessarily jeopardizes the lives of law enforcement officials in the front line battling terrorists and other criminals.

The majority’s principal argument against the “cop killer” bullet provision was based on its hesitancy to grant the executive branch the power to make any final determinations regarding the banning of these weapons of destruction. Their concern is somewhat surprising given that so many other provisions in the bill already vest the executive branch with substantial decision-making discretion. Among other things, for example, H.R. 1710 would give the executive branch near complete discretion to deprive people of their liberties by designating groups and their representatives as being “terrorist.”⁵⁰ It is notable that only when faced with a gun-related issue that vesting discretion in the executive branch is deemed problematic by the Majority.

B. Failure to require tagging of explosive materials

Another significant amendment rejected by the Majority would have required the inclusion of taggants (tracer elements) in explosive materials and mandated that unregulated yet highly explosive materials (such as fertilizer) be rendered inert. Here again the Republicans opted for a weak study, rather than authorizing the Secretary of Treasury to take such potentially life-saving actions.⁵¹

Including taggants in explosive materials can significantly enhance the investigation of bombing crimes by permitting identification of the source of an explosive should the explosive be used in a criminal or otherwise improper manner. Law enforcement officials would use the taggants to trace explosives to their manufacturer and batch date and, thereby, the buyer of the explosives as well. Requiring that certain otherwise explosive materials be made inert—such as the ammonium nitrate intended for use as a fertilizer that was used in the Oklahoma City bombing—has the further potential to avert deadly terrorist bombings.

⁴⁹ See Press Release of Fraternal Order of Police National Legislative Program concerning cop killer bullet legislation, June 30, 1995.

⁵⁰ During Committee consideration of the “cop-killer” bullet amendment, Ranking Member Conyers itemized a number of areas where H.R. 1710 had granted significant and essentially non-reviewable discretion to the executive branch:

1. Section 104 allows the Attorney General to determine what constitutes “terrorism.”
2. Section 206 authorizes the Sentencing Commission to enhance penalties for “terrorist” offenses.
3. Section 303 allows the FBI Director to obtain credit information in “foreign counter-intelligence operations,” even where no criminal predicate is present.
4. Section 304 allows the FBI Director to obtain records of common carriers, hotels, motels, and vehicle rentals in “foreign counter-intelligence operations,” even where no criminal predicate is present.
5. Section 308 grants the Attorney General emergency wiretap authority in terrorism cases.
6. Section 312 allows the Attorney General and the Secretary of Defense to determine when and how the military may participate in law enforcement activities involving “biological or chemical weapons.”
7. Section 314 allows the Attorney General to set up awards in federal felony cases of up to \$100,000.
8. Section 611 allows the Secretary of State to designate “terrorist groups” to whom making contributions would be illegal. (The Secretary can also remove such designation pursuant to Section 611).
9. Section 611 allows the Secretary of State to determine which groups “mere membership” will constitute grounds for exclusion from the United States.
10. Section 611 allows the Secretary of State to determine who is a “representative” of a terrorist organization for the purpose of deportation and exclusion.

⁵¹ This is in contrast with the Senate legislation, which authorized the Secretary of Treasury to take appropriate actions with regard to tagging explosives and rendering their components inert. S. 735, 104th Cong., 1st Sess. (1995).

The issue of tagging explosives has been under consideration by Congress for nearly 20 years, and has been the subject of prior study and recommendation without any avail. Indeed a 1980 Office of Technology Assessment report concluded that "identification of taggants would facilitate the investigation of almost all significant criminal bombings in which commercial explosives were used."⁵² In response to concerns that the taggants would not survive a blast, the OTA study found that the 3M taggant "appear(s) to survive the detonation of commercial explosives under ideal conditions [and that] a trained team can probably recover debris from which a laboratory can separate taggants under most incident conditions."⁵³ Unfortunately, all previous legislative efforts to adopt tagging requirements have been undermined by the National Rifle Association and the Institute of Makers of Explosives.⁵⁴

CONCLUSION

Although we would have strongly preferred to have been given the opportunity to support a sensible and real response to the violence caused by terrorists, the Committee has chosen to approve a bill which represents one of the most significant intrusions on our civil liberties since the eras of interning Japanese-Americans during World War II and the red-baiting of McCarthyism. We simply do not believe that fighting terrorism necessitates banning donations to and membership in suspected subversive organizations, using "star chamber" procedures to deport our legal resident aliens, tapping our phones without warrants or just cause, or further federalizing conduct previously regulated by the States.

We also strongly object to the Committee's failure to include in the legislation important provisions relating to armor-piercing bullets and identifying tracers on explosives. These provisions offered a genuine opportunity to limit the potential for terrorist misconduct, but were summarily rejected by the Majority. Instead the bill includes only weak studies, which are more likely to delay legislation than save lives.

⁵² OTA Report, "Taggants in Explosives," April 28, 1980.

⁵³ *Id.*

⁵⁴ Based on results from a Bureau of Mines pilot program, Senators Ribicoff and Javits unsuccessfully sought to include tagging requirements in legislation in 1977 and 1979. Subsequent efforts to enact tagging legislation after the OTA study were also defeated by the NRA, which also frustrated efforts by Senator Glenn to authorize the BATF to continue taggants research.

Although the threat from terrorists is real, the threat from official abuse directed at peaceful political activity is equally alarming. We urge the Members to reflect upon the lessons of the past and consider whether H.R. 1710 truly advances the principles this country has so long struggled to embody.

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